

MONTANA ADMINISTRATIVE REGISTER

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MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 14

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE BOARD OF INVESTMENTS
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 8.97.313 and 8.97.1707) PROPOSED AMENDMENT
pertaining to Board of Investments)
rules)

TO: All Concerned Persons

1. On August 16, 2022, at 10:00 a.m., the Board of Investments will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested persons may access the public hearing in the following ways:

https://mt-gov.zoom.us/j/84932998296?pwd=4fKVnymY1auBWZF9F_zxWoCimGBncp.1
Meeting ID: 849 3299 8296
Password: 004028

Dial by Telephone
+1 646 558 8656
Meeting ID: 849 3299 8296
Password: 004028
Find your local number: https://mt-gov.zoom.us/j/84932998296?pwd=4fKVnymY1auBWZF9F_zxWoCimGBncp.1

Join by SIP
84932998296@zoomcrc.com

2. The Board of Investments will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the board of the nature of the accommodation needed, no later than 5 p.m. on August 9, 2022. Please contact Dan Whyte, Chief Legal Counsel, Board of Investments, 2401 Colonial Drive, Third Floor, Helena, Montana 59601; telephone (406) 444-0587; fax (406) 449-6579; or dwhyte@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY. ARM Title 8, chapter 97 contains the board's administrative rules regarding the board's administration of the Unified Investment Program.

Based on the board's periodic review of its rules chapter and other related rules, the board observes that a certain rule contains a reference to a repealed rule.

The board proposes to amend ARM 8.97.313 to reflect the public nature of board documents and the exceptions for confidentiality. The board proposes to amend ARM 8.97.1707 to eliminate the reference to repealed ARM 8.97.1706 and to reflect that an application for financing is to be submitted according to board instructions.

While this general statement of reasonable necessity covers the basis for the following proposed rulemaking, it is supplemented below, where necessary, to explain rule-specific changes.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

8.97.313 CONFIDENTIALITY OF INFORMATION (1) ~~Except as provided in (2), information~~ Information submitted to the board will be treated as public information, except when the demand of individual privacy clearly exceeds the merits of public disclosure, the information is confidential, or contains intellectual property or proprietary information.

(2) ~~Pursuant to Montana law, Confidential information provided by a financial institution and a borrower will be treated as confidential, except the following includes:~~

(a) information determined to be personally identifiable information under Montana law;

(b) documents and discussions protected by the attorney-client privilege or attorney work product doctrine; and

(c) personnel matters.

(3) Intellectual property and proprietary information will be protected from public disclosure in accordance with the board's nondisclosure agreement.

~~(a) name and address of financial institution;~~

~~(b) name and address of borrower;~~

~~(c) short description of proposed project, including location of project;~~

~~(d) amount of proposed loan;~~

~~(e) the program(s) under which the financial institution or borrower is applying;~~

~~(f) any other information in which the demand of individual privacy does not clearly exceed the merits of public disclosure; and~~

~~(g) any information in which the demand of individual privacy clearly exceeds the merits of public disclosure when the borrower has expressly waived his right to privacy.~~

~~(3) The board shall maintain public files on each completed application received containing the following information:~~

~~(a) items (2)(a) through (g) of this rule;~~

~~(b) all written documents received or prepared concerning items (2)(a) through (g) of this rule;~~

~~(c) the investment officer's or their designee's recommendation to the board regarding items (2)(a) through (g) and their recommendation for approval or denial of the application; and~~

~~(d) a summary of board action regarding the application including the board's approval or disapproval of the application, the terms and interest rate of the financing, and the loan repayment record.~~

AUTH: 17-5-1504, 17-5-1521, MCA

IMP: 17-5-1504, 17-5-1521, MCA

8.97.1707 APPLICATION PROCEDURES AND PUBLIC HEARING REQUIREMENTS (1) through (5) remain the same.

(6) If the board determines that time is of the essence to an applicant applying for financing from federally tax-exempt bonds, the board may adopt a preliminary inducement resolution after an application has been submitted in accordance with ~~ARM 8.97.1706 and upon such other~~ terms and conditions deemed necessary by the board.

(7) through (9) remain the same.

AUTH: 17-5-1504, 17-5-1521, MCA

IMP: 17-5-1504, 17-5-1521, 17-5-1526, 17-5-1527, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity provided above, the board proposes amending the language to strike the reference to ARM 8.97.1706 since that rule is repealed and to indicate that the board will determine application requirements as necessary.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Dan Whyte, Chief Legal Counsel, 2401 Colonial Drive, Third Floor, P.O. Box 200126, Helena, MT 59604-0126; telephone (406) 444-0587; fax (406) 449-6579; or e-mail dwhyte@mt.gov and must be received no later than 5:00 p.m., August 19, 2022.

6. The Board of Investments has been designated to preside over and conduct the hearing.

7. The Board of Investments maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 5 above or to faxed to the office at (406) 449-6579 or may be made by completing a request form at any rules hearing held by the Board of Investments.

8. An electronic copy of this notice is available on the board's web site at www.investmentmt.com, or through the Secretary of State's web site at sosmt.gov/ARM/register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

BOARD OF INVESTMENTS
Karl Englund, Chair

/s/ Dan Whyte
Dan Whyte
Rule Reviewer

/s/ Dan Villa
Dan Villa, Executive Director
Board of Investments

Certified to the Secretary of State July 12, 2022.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
AND THE BOARD OF PHARMACY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.101.413, 24.174.401,	)	PROPOSED AMENDMENT AND
24.174.1201, 24.174.1202,	)	REPEAL
24.174.1203, 24.174.1207,	)	
24.174.1208, 24.174.1211,	)	
24.174.1702, 24.174.1703, and	)	
24.174.1704 and the repeal of ARM	)	
24.174.1212 and 24.174.1213	)	
pertaining to the Board of Pharmacy	)	

TO: All Concerned Persons

1. On August 12, 2022, at 9:00 a.m., a public hearing will be held via remote conferencing to consider the proposed amendment and repeal of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, <https://mt-gov.zoom.us/j/88594773367>

Meeting ID: 885 9477 3367, Passcode: 801817

-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656

Meeting ID: 885 9477 3367, Passcode: 801817

The hearing will begin with a brief introduction by department staff to explain the use of the videoconference and telephonic platform. All participants will be muted except when it is their time to speak.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Pharmacy (board) no later than 5:00 p.m., on August 5, 2022, to advise us of the nature of the accommodation that you need. Please contact Marcie Bough, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2371; Montana Relay 711; facsimile (406) 841-2305; or dlibsdpba@mt.gov (board's e-mail).

3. GENERAL REASONABLE NECESSITY: The board determined it is reasonably necessary to amend several rules regarding the licensing and requirements of wholesale distributors to implement provisions of Chapter 33, Laws of 2017 (Senate Bill 68), codified at 37-7-601 through 37-7-612, MCA. The 2017 legislative amendments reflect federal provisions required through the U.S. Food and Drug Administration (FDA) specific to the Drug Supply Chain Security Act (DSCSA), Public Law 113-54.

While Senate Bill 68 became effective February 2017, the board delayed initial rulemaking while awaiting final FDA rules. When the FDA rules were not released by December 2019, the board met and received input from stakeholders. Rulemaking was again paused in 2020 for COVID-19 priorities as well as action regarding new Montana Prescription Drug Registry staff and vendor selection. The board has met several times and received further stakeholder input on these rule changes between March 2021 and February 2022.

Similar to many other states, the board currently issues one "wholesale drug distributor" license for all entities operating within the drug supply chain. The DSCSA and Senate Bill 68 require Montana to separate the multiple entities currently grouped under the single license. The proposed amendments will implement the bill by establishing a more specific wholesale distributor license (37-7-602(8), MCA), for purposes of wholesale distribution (37-7-602(7), MCA), both of which reflect DSCSA. The board is further separating entities/facilities from the wholesale distributor license that no longer meet the requirements of DSCSA by creating license types for third-party logistics providers (3PLs), repackagers, and manufacturers, as defined in 37-7-602, MCA.

The DSCSA also requires states to standardize licensing of wholesale distributors and 3PLs. The FDA released guidance on such standards and is currently working on rules to provide requirements for states to further implement. The board determined it is reasonably necessary to propose these amendments now to implement the provisions of Senate Bill 68 and establish the core license types as based on currently available information. The board expects that once the FDA publishes final rules and outlines additional standards for wholesale and 3PL licensing, further amendments will be proposed. Having four distinct license types will clarify a facility's scope of practice and role within the drug supply chain, better identify the different types of facilities licensed by the board, and set a base for implementation of DSCSA licensing requirements.

Accordingly, the board has determined that reasonable necessity exists to amend certain rules to reflect Senate Bill 68 and DSCSA by establishing license fees and requirements for wholesale distributors, 3PLs, repackagers, and manufacturers. Other amendments standardize requirements for all facilities generally. Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rules and provide the complete sources of the board's rulemaking authority. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. The department is proposing to amend the following rule. The rule proposed to be amended is as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (4) remain the same.

(5) Renewals for medical practitioners, as defined in 37-2-101, MCA, who also have a dispenser registration through the Board of Pharmacy, pursuant to 37-2-104, MCA, and ARM 24.174.1801, will renew their dispenser registration at the time of renewing their medical practitioner's license.

(5) (6) The following are renewal dates for the professions and occupations listed:
(a) through (x) remain the same.

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(y)	Pharmacy	~~Dangerous Drug License~~ <u>Dispenser/Distributor/Manufacturer Endorsement</u>	Annually	November 30
		<u>Out-of-State Mail Order Pharmacy</u>	Annually	November 30
		Pharmacist	Annually	June 30
		<u>Community and Institutional Pharmacy</u>	Annually	November 30
		Pharmacy Technician	Annually	June 30
		~~Pharmacy Technician in Training~~	~~Nonrenewable~~	
		Pharmacy Technician Utilization Plan Endorsement	Annually	November 30
		~~Telepharmacies~~ <u>Telepharmacy Endorsement</u>	Annually	November 30
		Wholesale Drug Distributor	Annually	November 30
		<u>Limited Service Pharmacy</u>	<u>Annually</u>	<u>November 30</u>
		<u>Clinical Pharmacist Practitioner Endorsement</u>	<u>Annually</u>	<u>June 30</u>

(z) through (am) remain the same.

(6) (7) The following are nonrenewable licenses:

(a) through (c) remain the same.

(d) ~~pharmacy technicians in training~~ pharmacist intern;

(e) remains the same.

(7) remains the same but is renumbered (8).

AUTH: 37-1-101, 37-1-141, MCA

IMP: 37-1-101, 37-1-141, MCA

REASON: The department is amending this rule on renewal dates to clarify current license types, identify the different license endorsements, and update appropriate renewal dates.

The department is adding (5) to align renewal of dispenser registration with the renewal of the medical practitioner's primary license, as provided in Senate Bill 374 (2021), and codified at 37-2-104, MCA. When the board initially implemented

the bill in MAR Notice No. 24-174-76 (2021), the board created the registration and renewal fees, but inadvertently missed clarifying the renewal timing in this rule. Adding a new subsection is clearer and preferred over having the clarification four times in this department rule, once for each medical practitioner's renewal.

It is reasonably necessary to amend (6) to update licenses, endorsements, and renewal dates to align with amendments to ARM 24.174.401, and pursuant to Senate Bill 68. Staff discovered that while not new, the clinical pharmacist practitioner endorsement had not been previously included in this renewal rule.

While reviewing the license types in this rule, staff noted that the board replaced the technician-in-training license type in 2019 with a provisional certified pharmacy technician license. Additionally, staff noticed that the intern license, which is nonrenewable, was also omitted. It is reasonably necessary at this time to strike the obsolete license type from (7), and add the nonrenewable pharmacist intern license.

5. The board is proposing to amend the following rules. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.174.401 FEE SCHEDULE

(1) through (5) remain the same.

(6) ~~Certified~~ Community and institutional pharmacy original certification (includes original, change in location, and change in ownership) 240

(7) ~~Certified~~ Community and institutional pharmacy annual renewal fee 150

(8) through (15) remain the same.

(16) Wholesale ~~drug~~ distributor license 240

(17) Annual wholesale ~~drug~~ distributor renewal 240

(18) through (24) remain the same.

(25) Third-party logistics provider (3PL) initial license and annual renewal fee 240

(26) Repackager initial license and annual renewal fee 240

(27) Manufacturer initial license and annual renewal fee 240

(25) remains the same but is renumbered (28).

AUTH: 37-1-134, 37-2-104, 37-7-201, 37-7-604, 50-32-314, MCA

IMP: 37-1-134, 37-2-104, 37-7-201, 37-7-306, 37-7-321, 37-7-604, 37-7-605, 37-7-703, 50-32-314, MCA

REASON: As part of the post-legislative rule review, the board determined it is reasonably necessary to update licensure types. The board is amending (6) and (7) to clarify the specific pharmacy license types and align with the current licensing naming convention for these pharmacies.

The board is adding initial license and annual renewal fees for third-party logistics providers, repackagers, and manufacturers in (26) through (28) per Senate Bill 68. The fees are the same as current wholesale distributor licensees pay.

Because most current wholesale drug distributor licensees will switch to either third-party logistics providers, repackagers, and manufacturers licenses at no cost, the board estimates that these fee changes will be budget neutral.

24.174.1201 WHOLESALE DRUG DISTRIBUTOR AND THIRD-PARTY LOGISTICS PROVIDER LICENSING (1) Every person engaged in ~~manufacturing,~~ wholesale distribution of drugs or prescription devices, which includes reverse wholesale distribution, ~~or selling of drugs, medicines, chemicals, poisons for medicinal purposes, medical gases, or legend devices other than to the consuming public or patient in the state of Montana~~ or as a third-party logistics provider (3PL), as defined in 37-7-602, MCA, shall be licensed annually by the board. Each applicant shall:

(a) and (b) remain the same.

(c) pay the appropriate licensing and registration fees; ~~and~~

(d) meet the requirements of 37-7-604, MCA; ~~and~~

(e) designate a person-in-charge of the facility and for purposes of meeting requirements of 37-7-611, MCA, regarding a criminal background check at time of initial licensure or any change in person-in-charge, complete the requirements included on a form prescribed by the board.

(i) The person-in-charge must notify the board of any changes or termination of services.

(ii) Within 72 hours of termination of services, a new person-in-charge must be designated in writing on the appropriate board-approved forms and filed with the board.

(2) The board will independently verify the applicant's standing through the National Practitioner Data Bank (NPDB) and National Association of Boards of Pharmacy Clearinghouse.

~~(2) (3)~~ The ~~wholesale drug distributor~~ license shall be posted in a conspicuous place in the wholesaler's place of business for which it is issued.

~~(3) (4)~~ No license may be issued to any ~~wholesale distributor applicant~~ whose intended place of business is a personal residence.

~~(4) (5)~~ Wholesale ~~drug~~ distributors located in Montana, applying for initial licensure, shall pass an inspection by a pharmacy inspector or other agent of the Board of Pharmacy before a license is issued.

~~(5) (6)~~ A separate license is required for each separate location, in-state and/or out-of-state, where drugs or devices are stored and directly distributed to Montana. ~~If a wholesaler distributes prescription drugs from more than one facility, the wholesaler must obtain a license for each facility.~~

~~(6) (7)~~ Wholesale ~~drug~~ distributors shall operate in compliance with applicable federal, state, and local laws and regulations. Wholesale ~~drug~~ distributors who ~~deal in~~ distribute controlled substances shall register with the board, to obtain an appropriate dangerous drug endorsement, and with the DEA, ~~and shall comply with all applicable state, local, and DEA regulations.~~

~~(7)~~ Manufacturers, distributors, and suppliers of medical gases shall operate in compliance with applicable federal, state, and local laws and regulations. ~~Manufacturers, distributors, and suppliers of medical gases shall register with the~~

board to obtain the appropriate endorsement on their wholesale drug distributor license.

(8) Wholesale distributors shall submit proof of surety bond upon initial licensure and at time of renewal as identified on forms prescribed by the board in compliance with state and federal requirements.

AUTH: 37-7-201, 37-7-610, MCA

IMP: 37-7-603, 37-7-604, 37-7-605, 37-7-606, 37-7-611, 37-7-612, MCA

24.174.1202 MINIMUM INFORMATION REQUIRED FOR LICENSURE MANUFACTURER AND REPACKAGER LICENSING (1) ~~The following information shall be supplied by each applicant for wholesale drug distributor licensure or renewal~~ Every person seeking licensure or renewal as a manufacturer or repackager, as defined in 37-7-602, MCA, shall:

- ~~(a) the name, full business address, and telephone number of the licensee;~~
- ~~(b) all trade or business names used by the licensee;~~
- ~~(c) the name, address, telephone number, and title of the designated person in charge of the facility who will serve as the responsible individual of the wholesale drug distributor with the board and who is actively involved in and aware of the actual daily operation of the wholesale drug distributor~~
- ~~(d) whether the ownership or operation is a partnership, corporation, or sole proprietorship;~~
- ~~(e) proof of registration with the Montana Secretary of State;~~
- ~~(f) if out-of-state, proof of corresponding licensure in good standing in the state in which the applicant resides;~~
- ~~(g) the federal tax identification number of the company; and~~
- ~~(h) written documentation in compliance with the information required under 37-7-604, MCA.~~

(a) be a legal entity registered and in good standing with the Montana Secretary of State;

- (b) file an application on a form prescribed by the board;
- (c) pay the appropriate licensing and registration fees;
- (d) meet the requirements of 37-7-604, MCA; and
- (e) designate a person-in-charge of the facility.
- (i) The person-in-charge must notify the board of any changes or termination of services.

(ii) Within 72 hours of termination of services, a new person-in-charge must be designated in writing on the appropriate board-approved forms and filed with the board.

~~(2) Any changes in information contained in (1) shall be submitted to the board within 30 days of the change. Any changes in location or ownership require that a new license application be filed with the board at least 30 days prior to the change.~~

(2) The board will independently verify the applicant's standing through the National Practitioner Data Bank (NPDB) and National Association of Boards of Pharmacy Clearinghouse.

(3) The license shall be posted in a conspicuous place in the place of business for which it is issued.

(4) No license may be issued to any applicant whose intended place of business is a personal residence.

(5) Applicants located in Montana, applying for initial licensure, shall pass an inspection by a pharmacy inspector or other agent of the Board of Pharmacy before a license is issued.

(6) A separate license is required for each separate location where drugs or devices are stored, repackaged, and/or directly distributed to Montana. For manufacturers, a license shall be issued to a facility meeting the requirements that is located in Montana.

(7) Licensees shall operate in compliance with applicable federal, state, and local laws and regulations. Licensees who distribute controlled substances shall register with the board, obtain an appropriate dangerous drug endorsement, register with the DEA, and shall comply with all applicable state, local, and DEA regulations.

AUTH: 37-7-201, 37-7-610, MCA

IMP: 37-7-201, 37-7-604, 37-7-605, 37-7-610, MCA

24.174.1203 PERSONNEL (1) Each ~~wholesale drug distributor~~ licensee under this subchapter shall require each person employed in any prescription drug wholesale activity to have sufficient education, training, and experience in any combination, sufficient for that person to:

(a) complete assigned work in a manner which maintains the quality, safety, and security of the drug or device products in accordance with Title 37, MCA;

(b) remains the same.

AUTH: 37-7-201, 37-7-610, MCA

IMP: 37-7-604, 37-7-610, MCA

24.174.1207 CHANGE IN LOCATION (1) Whenever a ~~wholesale drug distributor~~ facility licensed under this subchapter changes its physical location outside of its then existing business location, its original license becomes void and must be surrendered. The ~~wholesale drug distributor~~ facility shall submit a new license application for the new location at least 30 days before such change occurs.

AUTH: 37-7-201, 37-7-610, MCA

IMP: 37-7-604, 37-7-605, 37-7-610, MCA

24.174.1208 CHANGE IN OWNERSHIP (1) When a ~~wholesale drug distributor~~ facility licensed under this subchapter changes ownership, the original license becomes void and must be surrendered to the board, and a new license obtained by the new owner. The owner shall submit a new license application at least 30 days prior to the change in ownership.

(2) and (3) remain the same.

AUTH: 37-7-201, 37-7-610, MCA

IMP: 37-7-604, 37-7-605, 37-7-610, MCA

24.174.1211 MINIMUM REQUIREMENTS FOR STORAGE AND HANDLING OF DRUGS FACILITY REQUIREMENTS (1) ~~All facilities at which prescription drugs are stored, warehoused, handled, held, offered, marketed, or displayed licensed under this subchapter shall:~~

~~(a) be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;~~

~~(b) have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;~~

~~(c) have a physically separate area for storage of all prescription drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed, secondary containers that have been opened;~~

~~(d) be maintained in a clean and orderly condition; and~~

~~(e) be free from infestation by insects, rodents, birds, or vermin of any kind.~~

(a) establish, maintain, and adhere to written policies and procedures for receipt, recordkeeping, security, storage, inventory control, and distribution of drugs or devices;

(b) comply with state and federal law requirements including, but not limited to:

(i) 37-7-602, 37-7-604, 37-7-609, and 37-7-610, MCA; and

(ii) 21 CFR § 205 as established by the Food and Drug Administration (FDA);

and

(c) comply with product track and trace transaction requirements established by the FDA.

~~(2) All facilities used for wholesale drug distribution shall be secure from unauthorized entry as provided for in 37-7-604, MCA, and as follows:~~

~~(a) access from outside the premises shall be kept to a minimum and be well controlled;~~

~~(b) the outside perimeter of the premises shall be well-lighted; and~~

~~(c) entry into areas where prescription drugs are held shall be limited to authorized personnel.~~

~~(3) All facilities shall be equipped with a security system to detect entry after hours.~~

~~(4) All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.~~

~~(5) All drugs shall be stored at temperatures and under conditions in accordance with the requirements, if any, in the labeling of such drugs, or with requirements in the current edition of the United States Pharmacopeia/National Formulary, published by the United States Pharmacopeia Convention Inc., which is available for inspection at the pharmacy library at the University of Montana School of Pharmacy and Allied Health Sciences, Missoula, MT 59812-1075.~~

~~(a) If no storage requirements are established for a drug, the drug may be held at "controlled room temperature," as defined in the United States~~

Pharmacopeia/National Formulary, to help ensure that its identity, strength, quality and purity are not adversely affected.

~~(b) Manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or logs shall be used to document proper storage of prescription drugs.~~

~~(c) The record keeping requirements in these rules shall be followed for all stored drugs.~~

~~(6) A stock of prescription drugs, adequate to service the ordinary needs of practitioners and pharmacies with which the wholesaler transacts business, must be maintained.~~

~~(7) A wholesaler may not maintain a stock of controlled substances unless the wholesaler ordinarily sells controlled substances to practitioners and pharmacies with which the wholesaler transacts business.~~

(2) Inventories and records shall be made available for inspection and photocopy by authorized federal, state, or local law enforcement agency officials for a period of two years following distribution of inventory.

(3) Records described in this subchapter that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at central locations apart from the inspection site and not electronically retrievable shall be made available for inspection within two working days of a request by an authorized official of a federal, state, or local law enforcement agency.

AUTH: 37-7-201, 37-7-610, MCA

IMP: 37-7-604, 37-7-610, MCA

REASON: The board is amending this rule to set forth minimum compliance requirements for all facility licensees regarding policies and procedures for receipt, recordkeeping, security, storage, inventory control and distribution, including compliance with national licensing standards for wholesale distributors and 3PLs pursuant to FDA rulemaking as required by DSCSA. Additionally, the amendments include compliance with drug product track and trace requirements of DSCSA as implemented by the FDA regarding security of the drug supply chain. It is reasonable to strike (4) through (7) as the provisions are outdated, duplicated elsewhere in statute or rule, or being consolidated into other rules.

24.174.1702 INFORMATION REQUIRED FOR SUBMISSION (1) Each entity ~~registered~~ licensed by the board as a ~~certified~~ community pharmacy or as an out-of-state mail service pharmacy that dispenses to patients in Montana shall provide the following controlled substances dispensing information to the board:

(a) remains the same.

(b) full name, address, telephone number, gender, species code, and date of birth for whom the prescription was written;

(c) and (d) remain the same.

(e) date the prescription was filled and sold by the pharmacy;

(f) number of refills;

(f) through (i) remain the same but are renumbered (g) through (j).

(2) Each entity licensed by the board as an institutional pharmacy shall comply with the reporting requirements listed in this rule if they dispense controlled substances in an outpatient, discharge, starter packet, or other related capacity in which the controlled substance(s) leaves their premises. Institutional pharmacies are not required to submit zero reports.

AUTH: 37-7-1512, MCA

IMP: 37-7-1502, 37-7-1503, 37-7-1512, MCA

REASON: The board is amending this rule and ARM 24.174.1703 and 24.174.1704, relating to the Montana Prescription Drug Registry (MPDR), in response to recommendations in a June 2019 Montana Legislative Audit Division report, *Montana Prescription Drug Registry* (18DP-01), Original Information Systems Audit, issued to the Legislative Audit Committee. The department and the board agreed with the audit recommendations to update the reporting standards and data fields that pharmacies are required to report to the MPDR and committed to such changes in the department's June 2019 audit report response and June 2021 follow-up response. The transition of the MPDR database to a new system vendor in March 2021 provided the necessary functionality to implement the updated reporting standards and related revisions.

It is reasonably necessary to amend these three rules to clarify institutional pharmacy reporting requirements, update required data reporting fields, incorporate a more current and robust electronic reporting standard, and explain acceptable electronic reporting methods. Further amendments describe zero reporting requirements, and update the time for resubmitting error reports to seven days from original submission to better represent frontline pharmacy practice and align with compliance monitoring functionality and logistics of the new system vendor.

24.174.1703 ELECTRONIC FORMAT REQUIRED FOR THE TRANSMISSION OF INFORMATION (1) All prescription information submitted to the board pursuant to ARM 24.174.1702, must be transmitted in the format specified by the American Society for Automation in Pharmacy (ASAP), version 4.1 ~~4.2A~~, dated ~~2009~~ 2016, at a minimum, which is adopted and incorporated by reference. ~~A copy of the ASAP standards may be obtained through the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana, 59620-0513.~~

(a) Entities must contact ASAP directly to obtain the technical specification of the ASAP standard; and

(b) The acceptable methods of electronic reporting are Secure File Transfer Protocol (SFTP), file upload via a secure web-based interface, and/or manual data entry of prescription information via a secure web-based interface. The secure web-based interface is provided by the system vendor maintained by the board.

(2) Reporting entities shall refer to the Montana Prescription Drug Registry (MPDR) Data Submission Guide for the ASAP format and MPDR required fields available on the Board of Pharmacy's MPDR website at www.mpdr.mt.gov.

AUTH: 37-7-1512, MCA

IMP: 37-7-1503, 37-7-1512, MCA

24.174.1704 REQUIREMENTS FOR SUBMITTING PRESCRIPTION
REGISTRY INFORMATION TO THE BOARD (1) remains the same.

(2) A pharmacy shall submit all prescription drug order information for a controlled substance or a zero report to the board no later than close of the next business day after the date of dispensing the controlled substance or the zero report.

~~(3) If a pharmacy that dispenses controlled substances has not dispensed any controlled substances during a calendar month, the pharmacy shall verify that no controlled substances were dispensed for that month by submitting a "zero report" to the board. A "zero report" is due on or before the fifth day of the next month.~~

(4) ~~(3)~~ A pharmacy that does not dispense controlled substances shall notify the board by submitting an appropriate board-approved form attesting that the pharmacy does not dispense controlled substances. A pharmacy is not exempt from reporting requirements until it receives approval from the board.

(a) The board-approved form submitted by a pharmacy that does not dispense controlled substances shall be maintained on file with the board and at the pharmacy's location.

(b) ~~If a~~ A pharmacy's exempt status does not end unless the pharmacy is either issued a new license number or until the pharmacy does dispense dispenses a controlled substance, ~~it shall then comply with the reporting requirements of this rule.~~

(5) remains the same but is renumbered (4).

~~(6) (5)~~ It is the responsibility of the submitting pharmacy to address any errors or questions about information that the pharmacy has submitted to the prescription drug registry and resubmit corrected data ~~no later than close of the next business day~~ within seven days after the date of the original submission.

AUTH: 37-7-1512, MCA

IMP: 37-7-1503, 37-7-1512, MCA

6. The board is proposing to repeal the following rules:

24.174.1212 MINIMUM REQUIREMENTS FOR ESTABLISHMENT AND
MAINTENANCE OF DRUG DISTRIBUTION RECORDS

AUTH: 37-7-201, 37-7-610, MCA

IMP: 37-7-604, 37-7-609, MCA

REASON: The board is repealing ARM 24.174.1212 to remove outdated and/or duplicative language. Relevant provisions are being consolidated into ARM 24.174.1211.

24.174.1213 NATIONAL CLEARINGHOUSE FOR WHOLESALE DRUG
DISTRIBUTOR LICENSING

AUTH: 37-7-201, 37-7-610, MCA

IMP: 37-7-604, 37-7-605, 37-7-606, 37-7-607, MCA

REASON: The board is repealing ARM 24.174.1213 as outdated and irrelevant. To the board's knowledge, the clearinghouse process has never been utilized in Montana as described in this rule. A new clearinghouse tool from the National Association of Boards of Pharmacy is being added to ARM 24.174.1201(2) and will be used to check home state licensure, discipline, and other information for licensure applicants.

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdpba@mt.gov, and must be received no later than 5:00 p.m., August 19, 2022.

8. An electronic copy of this notice of public hearing is available at www.pharmacy.mt.gov. Although the department strives to keep its websites accessible at all times, concerned persons should be aware that websites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a website do not excuse late submission of comments.

9. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons wishing to have their name added to the list shall make a written request that includes the name and e-mail or mailing address of the person to receive notices and specifies the intent to receive notices of all board administrative rulemaking proceedings or a particular subject matter. The request must indicate whether e-mail or standard mail is preferred and may be sent or delivered to the Board of Pharmacy, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to (406) 841-2305; e-mailed to dlibsdpba@mt.gov; or by completing a request form at any rules hearing held by the board.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 6, 2022, by telephone.

11. Pursuant to 2-4-111, MCA, the board has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

12. Department staff has been designated to preside over and conduct this hearing.

BOARD OF PHARMACY
TONY KING, PHARMACIST,

PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 12, 2022.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through VI and the repeal of	)	PROPOSED ADOPTION AND
ARM 38.5.2001, 38.5.2002,	)	REPEAL
38.5.2003, 38.5.2004, 38.5.2005,	)	
38.5.2006, 38.5.2007, 38.5.2008,	)	
38.5.2009, 38.5.2010, 38.5.2011,	)	
38.5.2012, 38.5.2016, 38.5.8201,	)	
38.5.8202, 38.5.8203, 38.5.8204,	)	
38.5.8209, 38.5.8210, 38.5.8211,	)	
38.5.8212, 38.5.8213, 38.5.8218,	)	
38.5.8219, 38.5.8220, 38.5.8221,	)	
38.5.8225, 38.5.8226, 38.5.8227, and	)	
38.5.8229 pertaining to resource	)	
planning	)	

TO: All Concerned Persons

1. On August 16, 2022, at 1:00 p.m., the Department of Public Service Regulation will hold a public hearing in the Bollinger Room, at 1701 Prospect Avenue, Helena, Montana 59620-2601, to consider the proposed adoption and repeal of the above-stated rules.

2. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Service Regulation no later than 5:00 p.m. on August 12, 2022, to advise us of the nature of the accommodation that you need. Please contact the Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana, 59620-2601; telephone (406) 444-6199; fax (406) 444-7618; or e-mail pschelp@mt.gov.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I GOAL AND POLICY (1) Integrated least-cost resource planning is an ongoing, dynamic, and flexible process that:

- (a) manages the consequences of risk and uncertainty;
- (b) integrates demand- and supply-side resources to minimize the long-term total cost of service;
- (c) considers a broad range of attributes in the evaluation of alternative resources and their cost-effectiveness;
- (d) engages stakeholders and the public; and
- (e) is transparent and reasonably understandable to stakeholders, the public, and the commission.

(2) The goal of integrated least-cost resource planning and acquisition is to ensure public utilities meet their customers' needs for adequate, reliable, and efficient energy services at the lowest long-term total cost while managing risks and remaining financially sound. To achieve this goal, utilities should plan to meet future customer demand and energy requirements through timely acquisition of a diverse mix of cost-effective resources and should actively pursue and acquire all cost-effective demand-side resources. The cost-effectiveness of all resource acquisitions should be evaluated with respect to long-term societal costs.

(3) These rules implement the policy of the State of Montana concerning integrated least-cost resource planning and acquisition. Electric utilities are required to file resource plans and should conduct planning and acquisition processes as outlined in the rules.

(4) The rules implement the commission's regulatory objective of ensuring an efficient allocation of society's resources to the provision of adequate, reliable electricity services and just and reasonable rates for consumers. In furtherance of this objective, utilities should operate existing resources and acquire new resources only when needed and in a manner consistent with these rules.

(5) The rules provide public utilities guidance on resource planning and acquisition but do not specify planning and acquisition outcomes or mandate investment decisions. The rules identify ways for utilities to reduce and manage the risk of resource acquisition to shareholders, customers, and society.

(6) Integrated least-cost resource planning consistent with the rules may demonstrate that previously rate-based resources should be abandoned and replaced by new resources. If such situations occur, a utility or the commission may initiate separate proceedings to determine the appropriate recovery of undepreciated, rate-based capital costs.

(7) Evaluations of potential demand-side resources should consider those resources cost-effective up to 110 percent of the utility's long-term avoided cost.

(8) Resource decisions have a significant impact on the public. Public utilities can best meet the respective goals of shareholders, customers, and society by meaningfully involving the public in resource planning and acquisition processes. The rules facilitate such involvement by requiring public utilities to conduct transparent planning and acquisition processes and thoroughly document the results of those processes in a manner that is reasonably understandable.

AUTH: 69-3-1204, 69-3-1206, MCA

IMP: 69-3-1204, 69-3-1205, 69-3-1206, 69-3-1207, 69-3-1209, MCA

NEW RULE II DEFINITIONS (1) "Action plan period" means the five-year period beginning with the calendar year after the filing of a resource plan.

(2) "Adequate" means, with respect to an electric system owned or controlled by a utility, the ability to supply the aggregate electrical demand and energy requirements of the utility's customers at all times, taking into account scheduled and reasonably expected unscheduled outages of system elements.

(3) "Assessment" means a documented process used by a utility to make informed judgments regarding elements of a resource plan and action plan based on

the careful consideration of quantitative and qualitative information and the input of stakeholders, the public, and the advisory committee required in 69-3-1208, MCA.

(4) "Cost" means the actual or forecast costs incurred to own, operate, and manage existing resources and procure new resources sufficient to provide adequate and reliable services over the planning period including, but not limited to, costs for:

- (a) capital recovery;
- (b) shareholder returns;
- (c) debt;
- (d) operations and maintenance;
- (e) fuel;
- (f) insurance;
- (g) taxes;
- (h) environmental remediation;
- (i) decommissioning;
- (j) contractual power purchases, however structured;
- (k) incremental transmission and distribution, including losses and

congestion;

- (l) administration; and
- (m) externalities.

(5) "Cost-effective" means that a project or resource is forecast:

(a) to be reliable and available within the time it is needed; and

(b) to meet or reduce the electric power demand of the intended consumers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative project or resource, or any portion thereof.

(6) "Environmentally responsible" means explicitly recognizing and incorporating into resource plans, resource planning processes, and resource procurement the policy of the State of Montana to encourage utilities to acquire resources in a manner that will help ensure a clean, healthful, safe, and economically productive environment.

(7) "Externalities" has the meaning in 69-3-1203(6), MCA.

(8) "Planning period" has the meaning in 69-3-1203(9), MCA.

(9) "Qualifying facility" means a resource as defined in 18 CFR part 292.101, and certified by the Federal Energy Regulatory Commission.

(10) "Reliable" means a power system that is adequate and can withstand sudden disturbances, such as electrical short circuits or unanticipated loss of system elements.

(11) "Resources" includes all of the following:

(a) "Demand-Side resources" means any material, device, technology, educational program, rate design, practice, or facility alteration designed to result in reduced peak demand, increased energy efficiency, energy conservation, or shifting or management of electricity demand and energy consumption and includes combined heat and power used to displace space heating, water heating, or another load.

(b) "Distribution-Side resources" means electrical generation or storage equipment located within a utility's distribution system, including real and personal property owned and controlled by utility customers and non-utility producers.

(c) "Power resources" means wholesale power transactions, including bilateral contracts and spot purchases, and plants and equipment, including storage equipment, owned, leased, or controlled, in whole or in part, by a utility.

(12) "Service" means required and optional electricity and/or electricity-related products or services provided by a utility to retail customers including metering, billing, distribution, transmission, generation, and generation-related services. Services include, but are not limited to, traditional electricity supply and delivery service, renewable energy-sourced offerings, interconnection and integration of distribution side and customer generators, net metering, demand and/or bill management programs, information-based services such as energy audits, transmission ancillary services, street lighting services, and other services for which a utility has filed or would be required to file a tariff.

(13) "Societal cost" means all costs to a utility plus externalities.

(14) "Stakeholder" means a member of the public (individual, corporation, organization, group, etc.) who may have an interest in, or may be affected by, these rules.

AUTH: 69-3-1204, 69-3-1206, MCA

IMP: 69-3-1204, 69-3-1205, 69-3-1206, 69-3-1207, 69-3-1209, MCA

NEW RULE III PLAN CONTENTS (1) Resource plans shall contain at least the following information:

(a) A description of any changes a utility has made to the content of its plan or its planning process in response to the commission's comments on its last plan and how the changes affect the current plan. Cross-references should be provided for all substantial changes.

(b) Annual electricity demand and energy forecasts for each year of the planning period for each major rate or service class, an explanation of the forecasting method(s) and assumptions and the historical customer counts, population data, load data, and end-use data used in the forecasting process, as applicable.

(c) A description and graphical presentation of daily and seasonal electric demand and energy requirements for each major rate or service class, the variability of those requirements, and how the utility assessed the potential for changes in the timing and variability of electric demand and energy requirements in the development of the plan.

(d) A description of the electric generating capability and characteristics of each of the utility's existing resources. The description should include the generator type and fuel source, nameplate capacity, effective load carrying capability or other capacity contribution estimate, expected annual energy production, storage capability, capacity factor, forced outage rate, annual emissions of carbon dioxide, online date, and expected retirement date. The description must include any historical data used to develop the reported generating capabilities and characteristics. The description may be in table form with accompanying explanatory text, as necessary.

(e) A description of the current average annual variable cost or contract price for each of the utility's existing power resources, including storage resources, and

the expected or projected average annual variable cost or contract prices at 5-year increments for the planning period. The description may be in table form with accompanying explanatory text, as necessary.

(f) A description of the aggregate load-serving capability and characteristics of existing programmatic demand-side resources within the utility's system and a forecast of aggregate capability over the planning period. The description should address each demand-side resource program offered and its total load-serving capabilities. The description may be in table form with accompanying explanatory text, as necessary. The description should provide the following historical information for each year since the utility's last plan:

- (i) program expenditures;
- (ii) incentive payments;
- (iii) demand and energy savings and the methods and assumptions used to estimate the savings;

- (iv) measures of the cost-effectiveness of the program including avoided costs;

- (v) annualized cost of saved energy and capacity;

- (vi) the methods used to estimate those costs; and

- (vii) estimates of the net economic benefit of the programs.

(g) An assessment of the adequacy of existing resources and a description of the nature of the need for additional resources to achieve industry standard adequacy standards or reserve margin requirements. The plan must completely and thoroughly describe the method(s) and assumptions used in the assessment, including computer modeling and model validation procedures. The assessment should document energy and capacity deficits, and their duration and timing, given the energy and demand forecasts in (b) and resource capabilities in (d) and (f). In addition, the assessment should document energy and capacity deficits for scenarios that involve higher and lower forecasts of energy and demand requirements and alternative performance levels for existing resources.

(h) A description of a wide range of plausibly cost-effective resources that could be acquired to satisfy the need for additional resources identified in the results of the assessment in (g). The description should include the electricity generating or load serving capabilities and characteristics of the resources including the technology, size, service of life or contract length, performance attributes, costs including estimates of potential infrastructure and interconnection costs, and environmental impacts including water and land use and emissions. The description must explain the method(s) and assumptions used to identify potential resources and define their generation or load serving capabilities and other attributes. The description may be in table form with accompanying text, as necessary.

(i) An evaluation of the full range of cost-effective means of combining the resources in (h) with the continued or discontinued operation of existing resources to satisfy the need for additional resources identified in (g) at the lowest long-term total cost. The evaluation must consider a broad range of future customer electricity demand and energy requirements and risks related to uncertainty about future loads, resource costs and performance, and changes in public policy and environmental regulations. The evaluation must be designed to allow for a comparison of the long-term total costs and risks of acquiring alternative resources, or combinations of

resources, to address the need identified in (g). The evaluation must include at least two scenarios that rely on increased renewable energy resources and demand-side resources pursuant to 69-3-1204(2)(a)(vi), MCA. The plan must completely and thoroughly describe the results of the evaluation and document the method(s) and assumptions used in the evaluation, including method(s) and assumptions used to determine cost-effectiveness and computer modeling and model validation procedures.

(j) A description of the utility's plan for demand-side resource acquisition over the planning period, to the extent such resources are not directly included in the evaluation in (i). The description should include the utility's assessment of the cost-effective demand-side resource potential on its system, including the method(s) and assumptions used to determine cost-effectiveness.

(k) A description of the advisory committee required in 69-3-1208, MCA, and complete and thorough documentation of how the utility designated members and engaged the advisory committee to review and evaluate technical, economic, and policy issues related to the utility's system and the planning process, including all substantial recommendations of the advisory committee and the utility's responses.

(l) A description of the public meetings conducted pursuant to 69-3-1205(1), MCA, including a summary of comments, concerns, or other input received and how they were considered.

(m) A description of the comments received on the draft plan published pursuant to [NEW RULE IV] and how they were considered.

(n) A near-term action plan describing the steps the utility intends to take based on the results and conclusions of the planning process, including the evaluations in this rule. The action plan must describe the process the utility intends to use to acquire any resources or resource types, including the use of competitive solicitations.

(o) A description of how information about the mix of resources used to provide the demand and energy requirements of customers will be disseminated to them, including emissions and other environmental impacts, using itemized labeling, reporting, or other mechanisms as appropriate.

(2) Plans that do not satisfy the requirements of this rule and 69-3-1204(2)(b), MCA will be deemed deficient and returned to the utility pursuant to 69-3-1204(3), MCA.

AUTH: 69-3-1204, MCA

IMP: 69-3-1204, 69-3-1205, 69-3-1206, 69-3-1207, 69-3-1208, 69-3-1209, MCA

NEW RULE IV PLANNING PROCESS (1) A utility shall designate and engage with an advisory committee according to 69-3-1208, MCA. The utility shall meet with the advisory committee on a regular basis as it prepares resource plans. Utilities are encouraged to open meetings with the advisory committee to the public whenever possible, but may hold private meetings when necessary to enable the utility to obtain from the committee a more complete review, evaluation, or recommendation. A utility should engage with the committee before deciding to close a meeting to the public.

(2) In addition to the advisory committee, a utility should engage stakeholders and the public during the process of preparing a resource plan. A utility should publicly notice engagement events at least 14 days in advance. A utility should present to stakeholders in a transparent, understandable manner the results of completed steps in the planning process and plans for subsequent steps and should provide an opportunity to comment on or request items to be addressed in a plan. A utility may combine meetings with the public, stakeholders, and the advisory committee.

(3) A utility should engage a broad cross-section of its customers (based on demographic, geographic, and service classification characteristics), including representatives of customer segments with low, moderate, and fixed incomes and highly impacted communities, on issues related to future service and resources that may be of interest to non-experts.

(4) At the start of each planning cycle, a utility should engage with the advisory committee and stakeholders to develop a work plan and timeline for completing the assessments and preparing plan contents required in [NEW RULE III].

(5) A utility shall publish a draft of its resource plan at least 45 days before filing the resource plan with the commission and accept comments on the draft resource plan for at least 30 days.

(6) A utility shall file a resource plan every three years.

AUTH: 69-3-1204, MCA

IMP: 69-3-1204, 69-3-1205, 69-3-1208, MCA

NEW RULE V RESOURCE PROCUREMENT (1) A utility's resource procurement processes should be guided by the policy in 69-3-1202, MCA, input from the public and the advisory committee provided for in 69-3-1208, MCA, and comments of the commission on the utility's most recent resource plan. Competitive solicitations should be considered the preferred method of acquiring resources. Utilities shall document decisions regarding the types of procurement processes used for later submission in applications for rate recovery where the prudence of procurement processes is examined.

(2) A utility shall notify the commission of a decision to issue a competitive solicitation. The notice shall precede release of a draft of the solicitation by at least 20 days. Before issuing the solicitation, the utility shall submit a draft of the solicitation to the commission in accordance with 69-3-1207, MCA, with a thorough description of the input and recommendations of its advisory committee regarding the solicitation process and how the utility modified the solicitation process in response to the advisory committee's input and recommendations or, alternatively, the basis for not modifying the process. The utility shall not issue the final solicitation until at least 45 days after submitting the draft solicitation. Upon issuing the final solicitation, the utility shall concurrently submit the solicitation to the commission in the docket assigned to the draft solicitation.

(3) Utilities should consider the usefulness of competitive solicitations for identifying and acquiring demand-side and distribution-side resources, but should

also leverage their unique knowledge of their customers' demand characteristics to evaluate cost-effective resource potential and design programs for its acquisition.

AUTH: 69-3-1204, MCA

IMP: 69-3-1204, 69-3-1205, 69-3-1207, 69-3-1208, 69-3-1209, MCA

NEW RULE VI GUIDELINES FOR COMPETITIVE SOLICITATIONS

- (1) A competitive solicitation issued by a utility should contain:
 - (a) specific minimum bidder requirements for credit and capability;
 - (b) standard form contracts or contract provisions the utility intends to use;
 - (c) specific explanations of bidders' ability to negotiate mutually agreeable final contract terms that are different from the standard form contracts;
 - (d) clear and complete descriptions of the resources, products, and services the utility seeks to acquire;
 - (e) a description of how the solicitation aligns with a resource need shown by the utility's most recent resource plan or a subsequently identified need resulting from a change in circumstances;
 - (f) specific bid evaluation and bidder qualification standards and criteria; and
 - (g) clear and complete descriptions of how the utility will share information about bid scores, including what information about the bid scores and bid ranking will be provided to bidders and when and how it will be provided.
- (2) A utility's process for evaluating offers or bids in competitive solicitations should:
 - (a) apply bidder qualification standards and bid evaluation criteria fairly and consistently;
 - (b) allow all bidders to adjust their bids in the event the utility or third-party administrator revises any evaluation standards or criteria;
 - (c) apply a systematic rating methodology to objectively rank bids with respect to price and non-price attributes. The rating methodology should be based on information and analyses from a utility's most recent resource plan, any commission comments on the plan, input from the advisory committee, public comments on the utility's draft solicitation, if applicable input from a third-party administrator, and industry best practices;
 - (d) document subjective judgments of the utility or the third-party administrator regarding bid scoring and ranking with sufficient detail to enable the utility to demonstrate in a transparent, understandable manner the decision-making process in subsequent regulatory proceedings involving rate recovery;
 - (e) identify a shortlist of offers from bidders with which the utility will pursue contract negotiations. Due diligence regarding bidder qualifications, bidder credit worthiness and experience, and project feasibility should be completed before selecting an offer for the shortlist. A bidder should not be informed that its offer is being considered for the shortlist while the utility is performing due diligence. If any bidders on the shortlist are allowed to refresh or supplement their bids in any way, all bidders on the shortlist should be allowed to do so;
 - (f) prevent the utility or bidders from reassigning or "flipping" offers from the original bidding entity to another entity;

(g) prevent public disclosure of information related to individual bids, including price, before the solicitation process is complete and contracts with the winning bidder(s) have been executed;

(h) facilitate public disclosure of information about the solicitation that is not confidential as defined in ARM 38.2.5001.

(3) When using a third-party administrator in the competitive solicitation process, a utility should:

(a) obtain input from its advisory committee and stakeholders regarding the appropriate use and selection of a third-party administrator, including whether a third-party administrator should be selected through a competitive process;

(b) consult with the third-party administrator on preparation of the solicitation. The third-party administrator should submit an assessment of the solicitation in the docket initiated in [NEW RULE V] concurrent with the utility's submission of the final solicitation;

(c) empower the third-party administrator to oversee the solicitation process to ensure that it is conducted fairly, transparently, and objectively. The utility is responsible for engaging the services of a third-party administrator and for all fees and expenses associated therewith. The utility may request recovery of fees and expenses associated with engaging a third-party administrator in customer rates; and

(d) empower the third-party administrator to:

(i) assess the reasonableness of bidder qualification and bid evaluation and scoring criteria;

(ii) evaluate bids;

(iii) select the initial shortlist; and

(iv) assess the reasonableness of the utility's final bid selection(s).

(4) If a competitive solicitation includes bids by the utility or an affiliate of the utility, or bids that may result in a resource owned by the utility, a third-party administrator must independently evaluate and score those bids and all or a sample of the remaining bids and assess the unique risks and advantages of utility-owned resource options compared to contractual alternatives considering the following factors:

(a) potential for construction delays and cost over-runs (considering contractual guarantees, cost and prudence of guarantees, remaining exposure to ratepayers for cost over-runs, and potential benefits of cost under-runs);

(b) projected forced outage rates;

(c) projected end effect values;

(d) projected emissions costs;

(e) projected operation and maintenance costs;

(f) projected capital additions costs; and

(g) projected performance regarding output, heat rate, and power curve.

(5) A third-party administrator must file a closing report in the docket opened in [NEW RULE V] after the utility has determined a final shortlist. The closing report must include an overall assessment of the competitive solicitation process including whether selected resources achieve the objective of minimizing costs to customers, considering risks, and whether the process was fair to all bidders.

(6) The consumer counsel should consider the following guidelines when it decides to engage an independent monitor pursuant to 69-3-1207(4), MCA:

(a) notify the commission as soon as practicable following notice by a utility of a decision to issue competitive solicitation if the consumer counsel intends to retain an independent monitor; and

(b) provide information needed and requested by the commission to establish the process by which the commission will charge a fee to the utility to pay costs incurred by the consumer counsel related to the independent monitor.

(7) When the consumer counsel engages an independent monitor the utility and the third-party administrator shall allow access by the independent monitor to all information related to the solicitation and the evaluation of offers.

(8) An independent monitor may file comments addressing the items in 69-3-1207(4)(c), MCA and/or prepare and file a closing report pursuant to 69-3-1207(4)(c)(iv) in the docket initiated in [NEW RULE V].

(9) A utility shall inquire and determine whether a bidder is an affiliate or will contract with any affiliate. When an affiliate of a utility submits an offer in the utility's competitive solicitation, the following guidelines should be incorporated into the evaluation process:

(a) Information should not be provided to an affiliate regarding bid evaluation criteria, bidder qualification criteria, due diligence, or any other relevant resource procurement information unless the same information is simultaneously provided to all other prospective bidders.

(b) Any individual who participates in the development of the solicitation or the evaluation or scoring of bids on behalf of the utility should not be allowed to participate in the preparation of any offer by an affiliate or to discuss the solicitation process with an affiliate or its representatives in a non-public setting.

(c) A utility or third-party administrator should not disclose the contents or results of a solicitation, including information about competing bids, to personnel involved in developing an offer by an affiliate unless such information has been disclosed to the public. Protections against improper disclosure of solicitation information should be explained in solicitation documents.

(10) If a utility procures resources involving affiliate transactions it shall be subject to the following filing requirements in any subsequent application regarding cost recovery under 69-3-301 through 69-3-310, MCA:

(a) a demonstration that the utility has not subordinated its service obligations in favor of an affiliate;

(b) a demonstration that all costs associated with any affiliate transactions are just and reasonable and in the public interest based on a lower of cost or market standard applied at the time of contract execution;

(c) a demonstration that costs and revenues are accurately and properly segregated between regulated and non-regulated affiliated entities;

(d) an affirmation that books of account and related records of any affiliate transacting business with the utility shall be available for audit and review by the commission. As reasonable and necessary and when lawful, the commission will protect affiliate information from public disclosure; and

(e) proof that a code of conduct has been implemented to guide management and other employees regarding standards for day-to-day business

activities with affiliates and to guard against self-dealing, gaming, and resulting subsidies.

(11) When a utility acquires resources by means other than a competitive solicitation, it should thoroughly document the alternative acquisition process, including the assumptions and methods used to assess cost-effectiveness and all factors considered in, and the rationale for, its decision not to use a competitive solicitation.

AUTH: 69-3-1204, MCA

IMP: 69-3-1204, 69-3-1205, 69-3-1207, 69-3-1208, 69-3-1209, MCA

REASON: In 2019, the Montana Legislature adopted House Bill (HB) 597, which was later codified through amendments to 69-3-1201 through 69-3-1209, MCA and 69-8-421, MCA, and repeal of 69-8-419 and 69-8-420, MCA. HB 597 enacted changes to the utility long-term planning process and added requirements for competitive procurement processes for new electric resources. To implement these changes, the agency proposes several new rules that draw concepts from its existing rules found at ARM Title 38, chapter 5, subchapters 20 and 82 and update the resource planning process to reflect the Legislature's directive to the agency. These rules replace, in whole or in part, existing resource planning rules in ARM Title 38, chapter 5, subchapters 20 and 82.

NEW RULES I through VI are necessary to combine preexisting resource planning rules in ARM Title 38, chapter 5, subchapters 20 and 82 in an efficient and orderly manner and to add clarity and remove unnecessary statements from the rules.

NEW RULE I Goal and Policy

This new rule replaces the Goal and Policy rule in ARM 38.5.2001, to ensure clarity and understanding among utilities, stakeholders, and the public.

NEW RULE II Definitions

New Rule II replaces the definitions rule in ARM 38.5.2002 and adds definitions for the terms "adequate," "assessment," "cost," "cost-effective," "qualifying facility," and "reliable." These terms are used in the remainder of the rules and the addition of the new definitions will ensure clear, consistent understanding among utilities, stakeholders, and the public.

NEW RULE III Plan Contents

NEW RULE III is proposed to implement requirements in 69-3-1204(1) and (2), MCA, regarding certain resource plan content and time frames for the filing of resource plans. This rule implements procedures the agency must follow to review utility plans, including publishing copies, providing for public comment, and holding public meetings as required by 69-3-1204(5), MCA, and establishes demand-side management reporting requirements required by 69-3-1209, MCA. The new rule is

proposed to implement the requirements for utilities to explain, justify, and document the data, assumptions, methodologies, models, determinants, and other inputs used in preparing plans according to 69-3-1204(2)(b), MCA, and the requirement that utilities hold public meetings as they prepare plans according to 69-3-1205(1), MCA. This rule is necessary to ensure that plans utilities submit contain sufficient information to allow the commission, stakeholders, and the public to evaluate compliance with statutory objectives and the reasonableness of the utilities' planning methods, subjective judgments, and resource acquisition strategies.

NEW RULE IV Planning Process

NEW RULE IV is proposed to implement the requirement that utilities assemble and maintain a broad-based advisory committee pursuant to 69-3-1208(1), MCA, to review, evaluate, and make recommendations on matters that arise in resource planning, and to engage more broadly with stakeholders and the public. This new rule is being proposed to establish guidelines for utility engagement with its advisory committee, stakeholders, and the public that are intended to balance transparency in the planning process with a utility's need for committee members to feel comfortable offering complete and professional input on technical, economic, and public policy issues regarding its electric system without binding any organizations that may employ committee members.

NEW RULE V Resource Procurement

This rule is being proposed to implement the statutory statement of policy in 69-3-1202(1)(b), MCA, to encourage utilities to acquire resources using a competitive solicitation process and implements procedures that require utilities to provide advance notice of an intent to conduct a competitive solicitation so that stakeholders and the public may provide input on that process. This proposed new rule implements guidelines to ensure that demand-side resources are fully considered in the evaluation of cost-effective means of meeting service requirements pursuant to 69-3-1204, MCA.

NEW RULE VI Guidelines for Competitive Solicitations

This new rule is being proposed to provide guidelines to the Consumer Counsel in requesting, selecting, and retaining an independent monitor for a competitive solicitation process as authorized by 69-3-1205(4), MCA. This new rule proposes to specify guidelines for competitive solicitations including allowing qualifying facilities and other utilities to submit bids, use of third-party administrators in certain circumstances, the role of the advisory committee in the resource planning and acquisition process, and mandatory filing by utilities of certain information related to competitive solicitations pursuant to 69-3-1207, MCA.

The proposed guidelines in New Rule VI are intended to promote transparency, fairness, and objectivity in utility resource acquisition processes, including by specifying guidelines when affiliate transactions could be involved. This new rule is

proposing to implement the state's policy of encouraging utilities to acquire resources using competitive solicitation processes by requiring utilities to document alternative acquisition processes, including the assumptions and methods used to assess cost-effectiveness and all factors considered in, and the rationale for, the decision not to use a competitive solicitation.

4. The department proposes to repeal the following rules:

38.5.2001 GOAL AND POLICY

AUTH: 69-3-103, 69-3-1204, 69-8-1006, MCA

IMP: 69-3-102, 69-3-106(1), 69-3-201, 69-3-1202, 69-8-1004, 69-8-1005, MCA

38.5.2002 DEFINITIONS

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-106(1), 69-3-201, MCA

38.5.2003 ENVIRONMENTAL EXTERNALITIES

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-106(1), 69-3-201, MCA

38.5.2004 UNCERTAINTY AND RISK

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-106(1), 69-3-201, MCA

38.5.2005 INITIAL RESOURCE SCREENING

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-106(1), 69-3-201, MCA

38.5.2006 OPTIMIZATION OF SUPPLY AND DEMAND-SIDE RESOURCES

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-106(1), 69-3-201, MCA

38.5.2007 LEAST COST RESOURCE PLANS

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-106(1), 69-3-201, MCA

38.5.2008 RATE DESIGN

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-106(1), 69-3-201, MCA

38.5.2009 ELECTRIC UTILITY MARKETING GOALS, MARKETING PROGRAMS, AND COMPETITION FOR LARGE DISCRETIONARY LOADS

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-106(1), 69-3-201, MCA

38.5.2010 COMPETITIVE RESOURCE SOLICITATIONS

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-106(1), 69-3-201, MCA

38.5.2011 REGULATORY AND MARKET BARRIERS TO INTEGRATED LEAST COST PLANNING AND ACQUISITION OF DEMAND-SIDE RESOURCES

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-106(1), 69-3-201, MCA

38.5.2012 SUBMITTING LEAST COST PLANS

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-106(1), 69-3-201, MCA

38.5.2016 RECOVERY OF ABANDONMENT COSTS

AUTH: 69-3-1206, MCA

IMP: 69-3-1206, MCA

38.5.8201 INTRODUCTION AND APPLICABILITY

AUTH: 69-3-2006, 69-8-403, 69-8-419, MCA

IMP: 69-3-2004, 69-3-2005, 69-8-403, MCA

38.5.8202 DEFINITIONS

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

38.5.8203 GOALS

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

38.5.8204 OBJECTIVES

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

38.5.8209 UTILITY EMERGENCY SERVICE RESPONSIBILITY

AUTH: 69-8-403, 69-8-419, MCA

IMP: 69-8-403, MCA

38.5.8210 RESOURCE NEEDS ASSESSMENT

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

38.5.8211 COST ALLOCATION AND RATE DESIGN

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

38.5.8212 RESOURCE ACQUISITION

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

38.5.8213 MODELING AND ANALYSIS

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

38.5.8218 DEMAND-SIDE RESOURCES

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

38.5.8219 RISK MANAGEMENT AND MITIGATION

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

38.5.8220 TRANSPARENCY AND DOCUMENTATION

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

38.5.8221 AFFILIATE TRANSACTION

AUTH: 69-8-403, MCA

IMP: 69-8-403, MCA

38.5.8225 STAKEHOLDER INPUT

AUTH: 69-8-403, MCA
IMP: 69-8-403, MCA

38.5.8226 ELECTRICITY SUPPLY RESOURCE PLANNING AND
PROCUREMENT FILINGS

AUTH: 69-8-403, MCA
IMP: 69-8-403, MCA

38.5.8227 REWARD FOR SUPERIOR ELECTRICITY SUPPLY SERVICE

AUTH: 69-8-403, MCA
IMP: 69-8-403, MCA

38.5.8229 CONSULTANT FEES

AUTH: 69-8-403, MCA
IMP: 69-1-114, 69-8-421, MCA

REASON: The commission's new rules incorporate and update concepts from its existing resource planning rules in ARM Title 38, chapter 5, subchapters 20 and 82. The new rules are designed to replace or supersede all the commission's existing resource planning rules, which the commission proposes to repeal.

5. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana 59620-2601; telephone (406) 444-6199; fax (406) 444-7618; or e-mail pschelp@mt.gov. Comments must be received no later than 5:00 p.m., August 22, 2022.

6. The Montana Consumer Counsel, 111 North Last Chance Gulch, Suite 1B, Helena, MT 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may do so by submitting a written request to the department. The request must include the name, e-mail address, and mailing address of the person to receive notices. The request must also specify which of the following matters the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers, rail carriers; and/or administrative procedures.

The written request may be mailed or delivered to the Department of Public Service Regulation, Legal Division, 1701 Prospect Avenue. P. O. Box 202601, Helena, MT 59620-2601 or emailed to pschelp@mt.gov. Persons may also have their name added to the list of interested persons by completing a request form at any rules hearing held by the department

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and repeal of the above-referenced rules will not significantly and directly impact small businesses.

9. An electronic copy of this proposal notice is available through the Secretary of State's website at <http://sosmt.gov/ARM/Register>.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on July 7, 2022.

/s/ LUCAS HAMILTON

Lucas Hamilton
Rule Reviewer

/s/ JAMES BROWN

James Brown
President
Montana Public Service Commission
Department of Public Service Regulation

Certified to the Secretary of State July 12, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rule I and the amendment of ARM	)	PROPOSED ADOPTION AND
42.12.106, 42.12.111, 42.12.118,	)	AMENDMENT
42.12.133, 42.12.143, 42.12.145,	)	
42.12.146, 42.12.147, 42.12.149,	)	
42.12.209, 42.12.301, 42.13.106,	)	
42.13.111, 42.13.405, 42.13.601,	)	
42.13.802, 42.13.1102 through	)	
42.13.1105, and 42.13.1202	)	
pertaining to department	)	
implementation of legislation for	)	
House Bills 157, 226, 525, 705 and	)	
Senate Bill 320 enacted by the 2021	)	
Montana Legislature	)	

TO: All Concerned Persons

1. On August 12, 2022, at 10:30 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on July 29, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2021 Montana Legislature made several statutory changes regarding the regulation of the alcoholic beverages industry through the enactment of House Bills 157, 226, 525, 705 and Senate Bill 320. Collectively, the legislation revised licensee ownership thresholds, retailer and manufacturer operating conditions and premises proximity standards, licensed premises standards, and the department's authority to regulate certain licensee - and non-licensee - activities when the business activity involves alcoholic beverage service and consumption.

The following is a brief overview for necessary context and legislative attribution to this proposed rulemaking: House Bill 157 (HB 157) amended 16-4-401, MCA, to allow the spouse of an on-premises consumption licensee to have an ownership interest in one or more manufacturers licenses and also amended 16-3-311, MCA, regarding premises suitability standards between a retail licensee and an

adjacent brewery or a winery; House Bill 226 (HB 226) authorizes certain retail licensees and agency liquor stores to use curbside pickup, including drive-through windows, to sell alcoholic beverages that were ordered online or through the phone and amended definitions in 16-1-106, MCA, for "original packaging," "containers," and "prepared servings"; House Bill 525 (HB 525) substantially expanded alcoholic beverage concession agreements in statute and set new parameters for the department's processing and compliance authority for concession agreements, licensees, and the concessionaires who receive alcoholic beverages service through a retail on-premises consumption all-beverages or beer and wine licensee.

House Bill 705 (HB 705) generally revised many alcoholic beverage statutes in Title 16, MCA, regarding licensee ownership criteria, retail operations for licensees and non-licensees (i.e., bottle clubs), and premises suitability standards. HB 705 also created two new alcoholic beverage storage options: a noncontiguous alcoholic beverage storage area for retail licensees and a resort alternate alcoholic beverage storage facility for resort licensees. HB 705 also permits the ability for resort retail licensees to pre-stock resort accommodations units subject to department approval.

Finally, SB 320 amended 16-4-105, 16-4-201, and 16-4-420, MCA, and authorizes an all-beverage licensee, on-premises consumption beer licensee, or a restaurant beer and wine licensee to obtain a delivery endorsement from the department for the limited purpose of delivering alcoholic beverages to the licensees' customers as a part of a customer's food purchase delivery.

While this general statement of reasonable necessity covers the basis for the following proposed rule adoption and rule amendments, it is supplemented below, where necessary, to explain rule-specific proposals.

4. The rule as proposed to be adopted provides as follows:

NEW RULE I NONCONTIGUOUS ALCOHOLIC BEVERAGE STORAGE AREAS; RESORT ALTERNATE RETAIL ALCOHOLIC BEVERAGE STORAGE FACILITIES (1) The use of a noncontiguous alcoholic beverage storage area by a retail licensee is permissible, as provided in 16-3-311, MCA.

(2) The use of a resort alternate alcoholic beverage storage facility is permissible, as provided in 16-4-213, MCA.

(3) A noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility must only be used for the storage of alcoholic beverages and must have adequate physical safeguards to prevent access by individuals other than the licensee or their employees.

(4) A licensee must submit the following to the department via its online licensing portal for approval of either a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility:

(a) a completed noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility request form, as applicable;

(b) the application fee provided in 16-3-311 or 16-4-213, MCA;

(c) a copy of the floor plan for a noncontiguous alcoholic beverage storage area or the resort site plan and floor plan for a resort alternate alcoholic beverage storage facility;

(d) documentation of the licensee's possessory interest in the noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility;

(e) documentation demonstrating that a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility meets the requirements of 16-3-311 and 16-4-213, MCA, as applicable, and (3);

(f) evidence of approvals from state or local officials that the premises meet building, health, and fire code requirements, as required by state or local law; and

(g) any additional documentation the department deems reasonably necessary in order to approve the licensee's request.

(5) Upon its acceptance and review of a licensee's submissions in (4), the department will arrange an inspection of a noncontiguous alcoholic beverage storage area or a resort alternate alcoholic beverage storage facility and will review the inspection findings.

(6) The department will notify the licensee, in writing, of the department's approval or denial of the noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility.

(7) Upon approval, a licensee's license will be updated to reflect the location of the noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility. The licensee must display a copy of the license in a prominent place at the noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility.

(8) No alcoholic beverages may be stored by the licensee at the noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility prior to receiving department approval.

(9) The selling, giving away, or consumption of alcoholic beverages at a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility is prohibited.

AUTH: 16-1-303, MCA

IMP: 16-3-301, 16-3-311, 16-4-213, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to adopt New Rule I to implement HB 705 amendments to 16-3-311 and 16-4-213, MCA, which expanded alcoholic beverage storage options for certain retail licensees. Section 16-3-311(6), MCA, permits a retail licensee to expand alcoholic beverage storage to a noncontiguous alcoholic beverage storage area after applying for, and obtaining, department approval. Section 16-4-213(8), MCA, permits a retail resort licensee or a retail all-alcoholic beverage licensee whose premises meet resort boundary criteria to expand alcoholic beverage storage to a resort alternate alcoholic beverage storage facility after applying for, and obtaining, department approval. New Rule I is necessary to implement the department's proposed request (application) process and the statutory application fee, to establish storage area suitability standards and inspections, and to inform licensees about general noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility compliance requirements.

Proposed (1) and (2) are provided for context and include necessary statutory attribution for each of the alcoholic beverage storage areas. The cross-referencing also eliminates the need for the department to restate in rule that which is clearly provided in statute.

Section (3) is a statement of department interpretation of the statutory requirement that licensees must have adequate physical safeguards in place at the storage location and prohibit access by unauthorized persons.

Section (4) proposes to describe the application submission process and lists the documentation requirements and fee necessary for the department to process the application and render its approval.

Section (5) proposes to describe the inspection process for a licensee's proposed noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility. Like other alcoholic beverages premises matters, the department will have an inspection of a proposed area performed to determine suitability under the law, and report the inspection findings. Section (5) also includes building, health, and fire code compliance references because the department defers to the state and local authorities to determine what is required in their respective jurisdictions.

Section (6) proposes to provide for a written approval for a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility.

Section (7) proposes to require a licensee to post a copy of their license, with the included storage area description, at the storage location. The department contends this is a necessary requirement for local law enforcement, department representatives, liquor store agents, beer wholesalers, and table wine distributors as confirmation that the storage area or facility has been approved by the department.

Section (8) proposes, consistent with other license prohibitions, that department approval is required prior to a licensee's use of storing alcoholic beverages at a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility.

Section (9) is proposed to prohibit non-storage activities (i.e., consumption) at a noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility because the intent of the respective laws was to permit additional alcoholic beverage storages areas only.

5. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.12.106 DEFINITIONS The following definitions apply to this chapter:

(1) through (19) remain the same.

~~(20) "Individual serving" means not more than 16 ounces of beer, not more than 2 ounces of liquor, not more than 7 ounces of wine, or a proportional combination thereof (for example, 1 ounce of liquor mixed with 8 ounces of beer).~~

(21) through (32) remain the same but are renumbered (20) through (31).

(32) "Prepared serving" means the same as the term provided in 16-1-106, MCA.

(33) through (45) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-1-106, 16-1-302, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to remove the definition of "individual serving" to implement a change in industry terminology adopted in HB 226. HB 226 allows for the curbside service of alcoholic beverages in original packaging, prepared servings, or growlers depending on the type of license. Amending the rule to remove "individual serving" in favor of the definition of "prepared serving" in 16-1-106, MCA, is necessary to clarify serving size.

The department also proposes to amend the implementing statutory citations for the rule to comply with the requirements of 2-4-305, MCA.

42.12.111 APPLICATION FEES AND PROCESSING FEES FOR OTHER REQUESTS (1) The fees to be charged for processing applications or other requests and submissions are as follows:

(a) through (u) remain the same.

(2) The fees to be charged for processing requests associated with an existing license are as follows:

(a) through (j) remain the same.

(k) Adding a delivery endorsement.....\$100

(3) through (5) remain the same.

AUTH: 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-420, MCA

IMP: 16-1-302, 16-1-303, 16-4-105, 16-4-201, 16-4-204, 16-4-303, 16-4-313, 16-4-414, 16-4-420, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.111(2)(k), through the addition of a new processing fee, authorized under 16-3-303(2)(j), MCA, to defray department costs in processing SB 320 delivery endorsements. The department proposes a \$100 processing fee for adding a delivery endorsement which is consistent with the fee for processing a catering endorsement request. The department also proposes an application fee for delivery endorsement applications which is provided in the proposed amendments to ARM 42.13.1102, 42.13.1103, and 42.13.1104. The department also proposes to amend the catchphrase of the rule to more accurately reflect the nature of the fees that are included in the rule and to comply with ARM 1.2.214 and proposes to amend the authorizing statutory citations for the rule to comply with the requirements of 2-4-305, MCA.

FISCAL IMPACT: In accordance with 2-4-302(1)(c), MCA, the department is required to estimate the fiscal impact of the processing fees in proposed ARM 42.12.111(2)(k) together with the number of persons affected, if known.

Based on the fiscal note for SB 320, the department stated in 2021 that of the approximate 2,500 licensees that qualify for the delivery endorsement, 200 would seek approval for the endorsement. However, as of the filing of this rulemaking no

licensees have applied or been approved for the endorsement; therefore, the department revises its initial estimate that 20 licensees will apply for the endorsement and the proposed processing fee would result in \$2,000 of general fund impact.

42.12.118 ABBREVIATED APPLICATION FOR LICENSE MODIFICATION

- (1) remains the same.
- (2) Licensees ~~shall~~ must submit an abbreviated application within 90 days of:
 - (a) removing an existing, previously qualified owner, member, partner, or shareholder from the license without the exchange of funds; ~~or~~
 - (b) adding an individual or entity as a less than ~~40~~ 15 percent owner; ~~or~~
 - (c) changing the entity type of the licensee if the existing owners and ownership percentages do not change.
- (3) Licensees ~~shall~~ must submit an abbreviated application prior to:
 - (a) and (b) remain the same.
 - (c) increasing the current ownership interest of any owner, member, partner, or shareholder from less than ~~40~~ 15 percent to ~~40~~ 15 percent or more;
 - (d) changing the entity type of the business if the existing owners or ownership percentages also change; or
 - (e) and (4) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-4-401, 16-4-402, 16-4-414, 16-4-415, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.118 because HB 705 permits a licensee to change business entity type when no owner or ownership percentages change, yet department acknowledgement and approval are still required. HB 705 also amended 16-4-401, MCA, to increase ownership percentage thresholds for persons who are required to submit to, and meet, alcoholic beverages licensing criteria.

Since HB 705 did not specify a timeframe for department notification of an entity change when no owner or ownership percentages change, the department proposes new (2)(c) as an addition to those events under (2) which require licensee notice within 90 days of the change, which the department contends is a reasonable amount of time. Section (3) is proposed for amendment to clarify those instances when prior approval is still necessary.

The department proposes to amend the ownership percentage thresholds in (2)(b) and (3)(c) to reflect 16-4-401, MCA, as amended. Finally, the department proposes to change "shall" to "must" in (2) and (3) for consistency with the department's rule drafting style regarding compulsory acts.

42.12.133 CONCESSION AGREEMENTS (1) Concession agreements, authorized to the licensees specified under 16-4-213(7) and 16-4-418(1), MCA, are written agreements, which may be in the form of a standalone contract or a department-provided, standard agreement, that provide the terms where formalize how a licensee will extend its licensed premises into the a concessionaire's

business for the purpose of selling and serving the licensee's alcoholic beverages to the concessionaire's customers. ~~A concession agreement may only be entered if the premises provided the~~ suitability requirements in ARM 42.12.145 are met.

(2) All new, proposed concession agreements must be submitted to the department for review and approval prior to their execution or effective date and must ~~include~~ be accompanied by the following:

(a) a completed concession agreement request form provided by the department, the application fee provided in 16-4-418, MCA, and the ~~one-time~~ processing fee described in ARM 42.12.111;

(b) and (c) remain the same.

(d) a completed alteration request form if the addition of the concessionaire's area will change the licensee's current floor plan that is on file with the department.

(e) The alteration request requirement in (d) does not apply to a new, proposed concession agreement when it is included in a license application submitted by an applicant pursuant to 16-4-402, MCA, and ARM 42.12.101.

(3) ~~The concession agreement must provide that licensee and concessionaire agree:~~

~~(a) the licensee may operate in the concessionaire's area;~~

~~(b) the parties may share employees. In the event of shared employees, the licensee must retain the right to discipline or otherwise sanction any employee in relation to the service of alcoholic beverages;~~

~~(c) on the compensation to be paid for shared employees. The compensation may not be based on a percentage of alcoholic beverage sales;~~

~~(d) except for concessionaires who have been approved by the department as a location manager, alcoholic beverages may not be ordered, purchased, or received by the concessionaire;~~

~~(e) the licensee may terminate the agreement without cause;~~

~~(f) the proceeds from the sale of alcoholic beverages are the property of the licensee; and~~

~~(g) any proceeds of alcoholic beverages sales that are collected by the concessionaire must be returned to the licensee not less than every two weeks.~~

(4) (3) The department, upon receipt of the proposed concession agreement and any supporting documentation, will advise the licensee and concessionaire of its approval or denial of the agreement unless further documentation or an audit review is necessary. ~~Upon approval of the agreement, the license will reflect language that the licensee is also serving alcoholic beverages in the establishment.~~

(5) (4) Upon approval of the proposed concession agreement, the license will reflect language that the licensee is also serving alcoholic beverages in the concessionaire's establishment. The concessionaire shall display in a prominent place, a copy of the license and a placard, issued by the department, stating the consequences for violations of the alcoholic beverage code by persons under 21 years of age.

(6) (5) A Except as provided in (6), licensee must submit any proposed modification ~~or assumption~~ of an existing concession agreement must be submitted for review and approval by the department. The licensee and concessionaire may continue to operate ~~the business~~ under the approved, existing concession pending approval by the department.

(6) A licensee and concessionaire may change the compensation arrangement under a concession agreement, without department approval, if it meets the requirements of 16-4-418(6)(a), MCA. The licensee and concessionaire must submit a copy of the new compensation terms on the concession agreement request form within 30 days of the change.

(7) All concession agreements must be renewed on or before June 30 of each year by completing and submitting a department-prescribed renewal form and paying the renewal fee provided in 16-4-418, MCA. Failure to submit a completed renewal form and pay the renewal fee may result in the denial of renewal of the concession agreement.

(8) Failure of a licensee to submit a completed annual license renewal form to the department and pay the license's renewal fee may result in the denial of renewal of the concession agreement.

AUTH: 16-1-303, ~~16-4-418~~, MCA

IMP: 16-3-305, 16-3-311, 16-4-401, 16-4-402, 16-4-418, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.133 to implement the enactment of HB 525, which amended 16-4-418, MCA.

Section (1) proposes amendments to clarify the licensees eligible to enter into concession agreements under 16-4-418(1), MCA, and to implement the HB 525 directive that the department provide a standardized concession agreement that complies with the requirements of 16-4-418, MCA. Other amendments are directed to improve the clarity of the rule through improved verbiage.

Section (2) has proposed amendments for clarity of the rule through improved verbiage that applies to existing licensees and license applicants. Subsection (2)(a) has been amended to reflect the statutory \$500 application fee, which is added to the list of required submissions to the department, and a minor change to improve verbiage. Subsection (2)(e) is proposed to clarify that there are concession agreement proposals that do not involve existing licensees, and that license application transactions do not require the alteration request in (2)(d).

The department proposes to strike current (3) in its entirety because the content is now included in 16-4-418, MCA.

Proposed (3) reflects amendments to improve verbiage and department notification to a concessionaire regarding the approval or denial of a concession agreement since they are a party to the agreement. The department also proposes to strike a redundant sentence in proposed (3) to what exists in proposed (4).

Proposed (5) is amended to clarify modifications to existing concession agreements and cross-reference the statutory exception in proposed (6) which allows compensation arrangement changes without department approval, but still requires the parties to notify and document the change with the department. Proposed (6) also seeks to establish 30 days as a notification requirement for the licensee and concessionaire, which the department believes is a reasonable amount of time.

HB 525 also amended 16-4-418, MCA, to require annual renewal of concession agreements. Since a license year runs from July 1 to June 30, the

department proposes (7) to make the renewal of the concession agreement due on or before June 30 of each year to mirror license renewals. The department also proposes to include that any failure to renew a concession agreement, which includes a completed renewal form and payment of the \$100 renewal fee, subjects the concession agreement to a possible denial of renewal. Similar to proposed (7), the department proposes (8) to inform parties to a concession agreement that the renewal of the concession agreement is contingent upon a licensee's renewal of its license.

Lastly, the department proposes to amend the authorizing and implementing statutory citations for the rule to comply with the requirements of 2-4-305, MCA.

42.12.143 RESTRICTION ON INTEREST IN OTHER LICENSES

(1) remains the same.

(2) A Montana all-beverages licensee may not:

(a) and (b) remain the same.

(c) individually or through the person's immediate family, receive financing from or have any affiliation to:

(i) an alcoholic beverage manufacturer or importer of alcoholic beverages, except that a licensee's spouse may possess an ownership interest in one or more manufacturer licenses; or

(ii) remains the same.

(3) A All other Montana retail on-premises consumption alcoholic beverages licensees may not:

(a) remains the same.

(b) individually or through the person's immediate family, receive financing from or have any affiliation to:

(i) an alcoholic beverage manufacturer or importer of alcoholic beverages, except that a licensee's spouse may possess an ownership interest in one or more manufacturer licenses; or

(ii) remains the same.

(4) A Montana retail off-premises consumption beer and table wine licensee may not:

(a) possess a financial or ownership interest in a Montana agency liquor store; or

(b) individually or through the person's immediate family, receive financing from or have any affiliation to:

(i) an alcoholic beverage manufacturer or importer of alcoholic beverages; or

(ii) a distributor of alcoholic beverages, including a Montana beer wholesaler, Montana table wine distributor, and a Montana agency liquor store.

(4) through (6) remain the same but are renumbered (5) through (7).

AUTH: 16-1-303, MCA

IMP: 16-4-201, 16-4-205, 16-4-401, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.143(2) and (3) to implement HB 157 changes to 16-4-401(2), MCA, which now allows the spouse of

an on-premises consumption retailer to have ownership interest in one or more manufacturers licenses. Further, since 16-4-401(2)(a)(iii), MCA, only applies to an on-premises consumption licensee, the department proposes new (4) which is necessary to add off-premises retail licensees to this rule. The addition of proposed (4) completes the scope of the rule's purpose which is to provide a singular rule that contains similarly themed statutory restrictions from multiple parts of the Alcoholic Beverage Code.

42.12.145 ON-PREMISES CONSUMPTION BEER AND ALL-BEVERAGE LICENSE - PREMISES SUITABILITY REQUIREMENTS (1) The department shall determine the suitability of the premises where an on-premises consumption beer or all-beverage retailer proposes to operate a license, when a party applies to obtain a license, transfer ownership interest in an existing license requiring the vetting of a new party pursuant to 16-4-401, MCA, changes the location where a license will be operated, or makes alterations to a premises with a floor plan that the department approved, or applies to operate under a concession agreement with a concessionaire, as provided in ARM 42.12.133.

(2) The premises of an on-premises consumption beer or all-beverage retailer may be considered suitable only if:

(a) through (d) remain the same.

(e) the premises are located in one building or a specific portion of one building, except that a patio/deck may extend the premises beyond the interior portion of the building. The interior portion of the premises must ~~be a continuous area that is not broken by any area in which the applicant or licensee does not have adequate control, such as another business or a common area shared with other building tenants~~ comply with the requirements of 16-3-311(3), MCA. Subject to the exceptions in 16-3-311(2), (8), and (9), MCA, if the premises are located in a portion of a building, the premises must be separated by permanent floor-to-ceiling walls from any other business, including any other business operated by the licensee. Except as otherwise provided in 16-3-311(8) and (9), MCA, the only access from the premises to another business may be through a single lockable door, no more than six feet wide, in the permanent floor-to-ceiling wall. Additional lockable doors in the permanent floor-to-ceiling wall may be allowed only upon department approval;

(f) through (l) remain the same.

(m) the floor plan accurately states the dimensions of the premises, includes the entity name, alcoholic beverage license number, physical address, ~~and submission date,~~ and identifies any all service areas, seating required under (o), stationary drink preparation areas, storage areas, patios/decks, perimeter barriers, drive-through windows, and permanent floor-to-ceiling walls required between the premises and another business;

(n) remains the same.

~~(o) the interior premises include a service area containing not less than twelve seats, exclusive of any seats at gambling machines;~~

(p) remains the same but is renumbered (o).

~~(q) (p)~~ all storage areas are located in the interior portion of the premises, except as authorized by 16-3-311 and 16-4-213, MCA;

~~(r) alcoholic beverages will not be sold through a drive-up window;~~

(s) and (t) remain the same but are renumbered (q) and (r).
(3) through (5) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-3-244, 16-3-309, 16-3-311, 16-3-312, 16-4-213, 16-4-402, 16-4-405,
16-4-418, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.145 to implement the statutory changes made under HB 157, HB 226, HB 525, and HB 705.

The department proposes an amendment to (2)(e) because HB 525 and HB 705 changed premises suitability requirements in 16-3-311, MCA. Section 16-3-311(3), MCA, requires the interior portion of the premises to be a continuous area under the control of the licensee and addresses multiple floors and common area shared by multiple building tenants in the same building, including entryways, hallways, stairwells, and elevators. Subsection (2)(e) is also proposed to contain amendments which refer to the suitability of premises exception that was created by HB 157's amendments to 16-3-311, MCA, regarding a retail on-premises licensee being adjacent to a brewery and winery.

The department's proposed amendments to (2)(m) implement HB 226's curbside pickup and use of a drive-through window, provided the window is noted on the floor plan and all other suitability and service requirements are met.

The department proposes to strike the seating requirement in current (2)(m) and (o) since HB 705's amendments to 16-3-311, MCA, do not require a certain number of seats in a licensed establishment for premises suitability.

The department proposes amendments in proposed (2)(p) to reflect HB 705's creation of noncontiguous alcoholic beverage storage areas and resort alternate alcoholic beverage storage facilities.

The department proposes to strike current (2)(r) since 16-3-312, MCA, permits certain licensees to use a drive-through window for curbside pickup.

Lastly, the department proposes to amend the implementing statutory citations for the rule to comply with the requirements of 2-4-305, MCA.

42.12.146 RESTAURANT BEER AND WINE LICENSE - PREMISES SUITABILITY REQUIREMENTS (1) remains the same.

(2) The premises of a restaurant beer and wine retailer may be considered suitable only if:

(a) through (d) remain the same.

(e) the premises are located in one building or a specific portion of one building, except that a patio/deck may extend the premises beyond the interior portion of the building. The interior portion of the premises must ~~be a continuous area that is not broken by any area in which the applicant or licensee does not have adequate control, such as another business or a common area shared with other building tenants~~ comply with the requirements of 16-3-311(3), MCA. Subject to the exceptions in 16-3-311(2), (8), and (9), MCA, if the premises are located in a portion of a building, the premises must be separated by permanent floor-to-ceiling walls

from any other business, including any other business operated by the licensee. Except as provided in 16-3-311(8) and (9), MCA, ~~the~~ only access from the premises to another business may be through a single lockable door, no more than six feet wide, in the permanent floor-to-ceiling wall. Additional lockable doors in the permanent floor-to-ceiling wall may be allowed only upon department approval;

(f) through (k) remain the same.

(l) the floor plan accurately states the dimensions of the premises, includes the entity name, alcoholic beverage license number, physical address, ~~and submission date,~~ and identifies any all service areas, service bars, dining room, kitchen, storage areas, patios/decks, perimeter barriers, drive-through windows, and permanent floor-to-ceiling walls required between the premises and another business;

(m) through (o) remain the same.

(p) all storage areas are located in the interior portion of the premises, except as authorized by 16-3-311, MCA;

(q) the physical layout and equipment utilized provide sufficient physical safeguards to prevent the self-service of alcoholic beverages at any service bar; and

(r) self-service devices and vending machines are not used to serve alcoholic beverages; and

~~(s) the sale of alcoholic beverages will not occur through a drive-up window.~~

(3) through (5) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-3-244, 16-3-309, 16-3-311, 16-3-312, 16-4-402, 16-4-405, 16-4-421, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.146 to implement the statutory changes made under HB 157, HB 226, HB 525, and HB 705.

The department proposes an amendment to (2)(e) because HB 525 and HB 705 changed premises suitability requirements in 16-3-311, MCA. Section 16-3-311(3), MCA, requires the interior portion of the premises to be a continuous area under the control of the licensee and addresses multiple floors and common area shared by multiple building tenants in the same building, including entryways, hallways, stairwells, and elevators. Subsection (2)(e) is also proposed to contain amendments which refer to the suitability of premises exception that was created by HB 157's amendments to 16-3-311, MCA, regarding a retail on-premises licensee being adjacent to a brewery and winery.

The department's proposed amendments to (2)(l) implement HB 226's curbside pickup and use of a drive-through window, provided the window is noted on the floor plan and all other premises suitability and service requirements are met.

The department proposed amendments to (2)(p) reflect HB 705's creation of noncontiguous alcoholic beverage storage areas for this license type.

The department proposes to strike current (2)(s) since 16-3-312, MCA, permits certain licensees to use a drive-through window for curbside pickup.

Lastly, the department proposes to amend the implementing statutory

citations for the rule to comply with the requirements of 2-4-305, MCA.

42.12.147 OFF-PREMISES BEER AND TABLE WINE LICENSE - PREMISES SUITABILITY REQUIREMENTS (1) remains the same.

(2) The premises of an off-premises beer and table wine retailer may be considered suitable only if:

(a) through (d) remain the same.

(e) the premises are located in one building or a specific portion of one building. The interior portion of the premises must ~~be a continuous area that is not broken by any area in which the applicant or licensee does not have adequate control, such as another business or a common area shared with other building tenants~~ comply with the requirements of 16-3-311(3), MCA. If the premises are located in a portion of a building, the premises must be separated by permanent floor-to-ceiling walls from any other licensed alcoholic beverage business. The only access from the premises to another licensed alcoholic beverage business may be through a single lockable door, no more than six feet wide, in the permanent floor-to-ceiling wall. Additional lockable doors or a doorway larger than six feet wide in the permanent floor-to-ceiling wall may be allowed only upon department approval;

(f) through (l) remain the same.

(m) the floor plan accurately states the dimensions of the premises, includes the entity name, alcoholic beverage license number, physical address, ~~and submission date, and~~ identifies any storage areas, ~~drive-through windows,~~ and permanent floor-to-ceiling walls required between the premises and another licensed alcoholic beverage business;

(n) there is interior access to any interior portion of the premises; ~~and~~

(o) all storage areas are located in the interior portion of the premises, except as authorized in 16-3-311, MCA; ~~and~~

~~(p) the sale of alcoholic beverages will not occur through a drive-up window.~~

(3) and (4) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-3-244, 16-3-309, 16-3-312, 16-4-115, 16-4-402, 16-4-405, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.147 to implement the statutory changes made under HB 226 and HB 705.

The department proposes an amendment to (2)(e) because HB 525 and HB 705 changed premises suitability requirements in 16-3-311, MCA. Section 16-3-311(3), MCA, requires the interior portion of the premises to be a continuous area under the control of the licensee and addresses multiple floors and common area shared by multiple building tenants in the same building, including entryways, hallways, stairwells, and elevators.

The department's proposed amendment to (2)(m) is necessary to implement HB 226's creation of 16-3-312, MCA, which authorizes certain licensees to use a drive-through window for curbside pickup, provided the window is noted on the floor plan and all other suitability requirements are met.

The department also proposes to amend (2)(o) to reflect House Bill 705's

introduction of noncontiguous alcoholic beverage storage areas for this license type.

The department proposes to strike current (2)(p) since 16-3-312, MCA, permits certain licensees to use a drive-through window for curbside pickup.

Lastly, the department proposes to amend the implementing statutory citations for the rule to comply with the requirements of 2-4-305, MCA.

42.12.149 WINERY, BREWERY, AND DISTILLERY - PREMISES SUITABILITY REQUIREMENTS (1) remains the same.

(2) The premises of a manufacturer may be considered suitable only if:

(a) through (e) remain the same.

(f) the premises are located in one building or a specific portion of one building, except that a patio/deck may extend the premises beyond the interior portion of the building. The interior portion of the premises must ~~be a continuous area that is not broken by any area in which the applicant or licensee does not have adequate control, such as another business or a common area shared with other building tenants~~ comply with the requirements of 16-3-311(3), MCA. If the premises are located in a portion of a building, the premises must be separated by permanent floor-to-ceiling walls from any other licensed alcoholic beverage business, except as provided in 16-3-311(8) and (9), MCA. The only access from the premises to another licensed alcoholic beverage business may be through a single lockable door, no more than six feet wide, in the permanent floor-to-ceiling wall, except as provided in 16-3-311(8) and (9), MCA. Additional lockable doors in the permanent floor-to-ceiling wall may be allowed only upon department approval;

(g) the floor plan accurately states the dimensions of the premises, includes the entity name, alcoholic beverage license number, physical address, and submission date, and identifies ~~any all~~ manufacturing areas, storage areas, sample room, drink preparation areas, patios/decks, perimeter barriers, drive-through windows, and permanent floor-to-ceiling walls required between the premises and another licensed alcoholic beverage business, except as provided in 16-3-311(8) and (9), MCA;

(h) through (k) remain the same.

(3) The premises may include more than one building for manufacturing purposes only if the ~~property on which the buildings are located is contiguous and the~~ licensee has possessory interest in the property on which the buildings are located. To seek approval, the licensee shall submit a form provided by the department and include verification that the Alcohol and Tobacco Tax and Trade Bureau approved the licensee's registration to operate any additional building under the manufacturer's existing federal permit or notice. All buildings on the premises are subject to the suitability requirements in (2).

(4) through (9) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-3-311, 16-4-102, 16-4-402, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.149 to

implement the statutory changes made under HB 157, HB 226, HB 525, and HB 705.

The department proposes an amendment to (2)(f) because HB 525 and HB 705 changed premises suitability requirements in 16-3-311, MCA, and the department desires that manufacturer premises suitability requirements have the greatest degree of parity with on-premises consumption license requirements as is possible. Section 16-3-311(3), MCA, requires the interior portion of the premises to be a continuous area under the control of the licensee and addresses multiple floors and common area shared by multiple building tenants in the same building, including entryways, hallways, stairwells, and elevators. Subsections (2)(f) and (g) are also proposed to contain amendments which refer to the suitability of premises exception that was created by HB 157's amendments to 16-3-311, MCA, regarding a retail on-premises licensee being adjacent to a brewery and winery.

The department's other proposed amendment to (2)(g) implements HB 226's curbside pickup and use of a drive-through window, provided the window is noted on the floor plan and all other suitability and service requirements are met.

While not connected to any legislation, the department also proposes a minor amendment to (3) which is necessary for manufacturing premises conformity with Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations for continuity of plant premises located at 27 CFR 19.53, to which the department gives deference on the matter. This amendment will reflect the ability of a manufacturer to pursue more than one building for manufacturing in accordance with TTB regulations and this rule.

Lastly, the department proposes to amend the implementing statutory citations for the rule to comply with the requirements of 2-4-305, MCA.

42.12.209 TRANSFER OF A LICENSE TO ANOTHER PERSON (1) and (2) remain the same.

(3) A current ownership interest of less than ~~40~~ 15 percent may not be increased to ~~40~~ 15 percent or more until an application reflecting the proposed increase is submitted to the department and the department approves the application.

(4) through (7) remain the same

(8) The provisions of this rule do not apply to the:

(a) remains the same

(b) addition of an individual or entity as a less than ~~40~~ 15 percent owner;

(c) through (11) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-4-401, 16-4-402, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.209(3) and (8)(b) to implement HB 705 amendments to 16-4-401, MCA, which increased ownership percentage thresholds for persons who are required to submit to, and meet, alcoholic beverages licensing criteria.

42.12.301 RESORT LICENSES; NON-RESORT LICENSES OPERATING ON RESORTS; DELIVERY AND CURBSIDE PICKUP (1) and (2) remain the same.

~~(3) The delivery of alcoholic beverages to guests staying in accommodation units located on the resort area is permissible provided the employees of the holder of the resort license deliver the alcoholic beverages.~~ A resort all-beverages licensee may deliver alcoholic beverages to guests staying in accommodation units, as provided in 16-4-213, MCA, after obtaining department approval and paying the statutory application fee.

~~(4) The delivery of alcoholic beverages to resort area accommodation units on a resort area is not permissible:~~

~~(a) by any non-resort licensee whose business is located on the resort area;~~
~~(b) to any other location on the resort area other than accommodation units; or~~
~~(c) where otherwise prohibited by retail sales restrictions provided in Title 16, chapters 3, 4, and 6, MCA.~~ A non-resort on-premises consumption licensee may deliver alcoholic beverages anywhere within the resort area if the licensee has complied with the delivery endorsement requirements of ARM 42.13.1102, 42.13.1103, or 42.13.1105, as applicable.

(5) Both resort and non-resort licensees may conduct the sale of alcoholic beverages via curbside pickup, which may include the use of a drive-up window, provided the licensee's premises comply with the premises suitability requirements of 16-3-311, MCA, and the applicable rules of the department.

AUTH: 16-1-303, MCA

IMP: 16-3-312, 16-4-201, 16-4-213, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.301(3) to improve the sentence structure relating to a resort licensee's ability to deliver alcoholic beverages to guests staying in accommodation units and to reflect the statutory application fee added by HB 705. The department's amendments to (4) improve the sentence structure and also implement SB 320's allowance for non-resort licensees to conduct alcoholic beverage delivery that is distinguishable from resort licensee delivery because it requires the licensee to obtain a delivery endorsement and comply with delivery endorsement requirements in the cross-referenced rules. Proposed (5) implements HB 226's curbside pickup and use of a drive-through window, provided the window is noted on the floor plan and all other suitability and service requirements are met. The department proposes to amend the rule's catchphrase based on the additional rule content and to comply with ARM 1.2.214, and amend the implementing statutory citations for the rule to comply with the requirements of 2-4-305, MCA.

42.13.106 ALTERATION OF PREMISES (1) Any alteration to licensed premises, other than a cosmetic change, must be ~~pre~~approved by the department.

(a) An alteration that increases the premises' square footage must receive preapproval.

(b) An alteration that does not increase the premises' square footage must be submitted within seven days from its commencement.

(2) ~~Prior to making alterations, a~~ A licensee must submit a request to alter the premises and provide copies of the current and proposed floor plans.

(3) Upon receipt of the items in (2), the department will ~~advise~~ notify the licensee within seven ~~working~~ business days of the approval or denial of the alteration request.

(4) The department's approval of an alteration request shall be valid for one year. Any alterations ~~that are~~ not completed within one year must be resubmitted to the department for another approval.

(5) ~~In the event~~ If the alteration prevents the licensee from continuing operations, the licensee shall request nonuse status pursuant to ARM 42.13.107.

(6) through (8) remain the same.

(9) Any alteration to licensed premises, other than a cosmetic change, without ~~prior~~ approval shall constitute a violation and may subject the licensee to administrative action.

AUTH: 16-1-303, MCA

IMP: 16-3-302, 16-3-311, 16-4-402, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department also proposes amendments to ARM 42.13.106 for improved clarity through better phrasing, such as changing (3) to reflect the department will "notify" an applicant versus "advise," and referring to "business" days instead of "working" days for the calculation of alteration request processing times.

42.13.111 DEFINITIONS The following definitions apply to this chapter:

(1) through (25) remain the same.

(26) "Purchase price" means the ordinary, dine-in menu price for beer and wine and food items.

(26) through (33) remain the same but are renumbered (27) through (34).

AUTH: 16-1-303, MCA

IMP: 16-1-302, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.13.111 to add a definition of "purchase price" in proposed (26) which correlates to licensee compliance that a consumer's purchase price of beer and wine does not exceed the purchase price of the food items being delivered by the licensee in contravention of 16-4-105(6)(a), 16-4-201(11), and 16-4-420(13)(b), MCA.

42.13.405 WINERY - CONDITIONS FOR OPERATING (1) In addition to all other alcoholic beverage licensing requirements, a winery shall:

(a) through (d) remain the same.

(e) sell and deliver its products for off-premises sales to distributors or retailers only in original packaging;

(f) through (h) remain the same.

(i) prevent the consumption or possession of alcoholic beverages on the premises between 2 a.m. and 8 a.m. by removing all alcoholic beverages, other than those purchased in original packaging sold for off-premises consumption pursuant to (3), from individuals' possession by 2 a.m.;

(j) through (2) remain the same.

(3) A winery may sell alcoholic beverages on its premises to a consumer for off-premises consumption only as follows under the following conditions:

~~(a) the sale may not be conducted through a drive-up window;~~

(b) (a) all alcoholic beverages must be in original packaging, prepared servings, or growlers; and

(c) (b) except as provided in (c), alcoholic beverages may only be sold in an approved sample room; and

(c) use curbside pickup, including a drive-through window, to sell alcoholic beverages that were ordered online or through the phone.

AUTH: 16-1-303, MCA

IMP: 16-3-301, 16-3-304, 16-3-305, 16-3-312, 16-3-406, 16-3-411, 16-4-107, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department also proposes amendments to ARM 42.13.405 for improved clarity through improved word choice/phrasing and section transitions. Proposed (3)(c) implements HB 226's curbside pickup and use of a drive-through window, provided the window is noted on the floor plan and all other suitability and service requirements are met. Lastly, the department proposes to amend the implementing statutory citations for the rule to comply with the requirements of 2-4-305, MCA.

42.13.601 BREWERY - CONDITIONS FOR OPERATING (1) In addition to all other alcoholic beverage licensing requirements, a brewery shall:

(a) through (c) remain the same.

~~(d) sell and deliver its product for off-premises sales only in original packaging;~~

(d) prevent the consumption of alcoholic beverages in the manufacturing area or storage area except as authorized by federal law;

(e) sell and deliver its products to wholesalers and retailers only in original packaging;

(f) maintain records documenting its business operations including, but not limited to, the sale, production, storage, and processing of alcoholic beverages on the premises; and

(g) electronically file all required alcoholic beverage tax returns and pay any taxes owed as provided in law.

(2) A license to operate a brewery is not a retail license.

(3) In addition to all other requirements, a brewery with an annual nationwide production of less than 100 barrels shall:

(a) refrain from providing alcoholic beverages on the premises until the department approves a sample room;

(b) only provide samples without charge;

(1)(e) and (f) remain the same but are renumbered (3)(c) and (d).

(g) (e) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises and those sold in original packaging for off-premises consumption pursuant to (f);

(f) sell all alcoholic beverages on its premises to a consumer for off-premises consumption under the following conditions:

(i) the alcoholic beverages must be sold in an approved sample room;

(ii) the alcoholic beverages must be in original packaging, prepared servings, or growlers only;

(iii) the sale of alcoholic beverages is prohibited between 2 a.m. and 8 a.m.;
and

(g) subject to, and in addition to the off-premises consumption sales conditions in (f), a brewery may use curbside pickup, including a drive-through window, to sell alcoholic beverages that were ordered online or through the phone.

~~(h) prevent the consumption of alcoholic beverages in the manufacturing area or storage area except as authorized by federal laws;~~

~~(i) maintain records documenting its business operations including, but not limited to, the sale, production, storage, and processing of alcoholic beverages on the premises; and~~

~~(j) electronically file all required alcoholic beverage tax returns and pay any taxes owed as provided in law.~~

~~(2) A license to operate a brewery is not a retail license.~~

~~(3) A brewery may sell alcoholic beverages on its premises to a consumer for off-premises consumption only as follows:~~

~~(a) the sale may not be conducted through a drive-up window;~~

~~(b) all alcoholic beverages must be in original packaging;~~

~~(c) alcoholic beverages may only be sold in an approved sample room; and~~

~~(d) the sale of alcoholic beverages is prohibited between 2 a.m. and 8 a.m.~~

(4) In addition to all other requirements, a small brewery with an annual nationwide production of not less than 100 barrels or more than 60,000 barrels that operates a sample room shall:

(a) remains the same.

(b) provide with or without charge no more than 48 ounces of alcoholic beverages to any individual for on-premises consumption or prepared servings through curbside pickup, including a drive-through window, during a business day;

(c) provide not more than 2,000 barrels of beer annually for on-premises consumption ~~on the premises~~, including the premises of any affiliated manufacturers as defined in 16-3-213, MCA;

(d) prevent the sale of alcoholic beverages for on-premises consumption between 8 p.m. and 10 a.m.; and

(e) prevent the consumption or possession of alcoholic beverages on the premises between 9 p.m. and 10 a.m. by removing all alcoholic beverages other than those purchased in original packaging sold for off-premises consumption pursuant to (h) from individuals' possession by 9 p.m.;

(f) prevent the self-service of alcoholic beverages on the premises;

(g) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated;

(h) sell alcoholic beverages on its premises to a consumer for off-premises consumption under the following conditions:

(i) the alcoholic beverages must be sold in an approved sample room;

(ii) all alcoholic beverages sold must be in original packaging, prepared servings, or growlers;

(iii) the sale of alcoholic beverages is prohibited between 2 a.m. and 8 a.m.;

(iv) the sale of alcoholic beverages in prepared servings is prohibited between 8 p.m. and 10 a.m.; and

(i) subject to, and in addition to the off-premises consumption sales conditions in (h), a brewery may use curbside pickup, including a drive-through window, to sell alcoholic beverages that were ordered online or through the phone.

(5) In addition to all other requirements, a brewery with an annual nationwide production of 60,000 barrels or more may only sell beer in original packaging to a licensed beer distributor. Selling or providing alcoholic beverages to consumers for consumption on the premises and selling alcoholic beverages to retailers is prohibited.

AUTH: 16-1-303, MCA

IMP: 16-3-211, 16-3-213, 16-3-214, 16-3-242, 16-3-301, 16-3-304, 16-3-305, 16-3-312, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department also proposes amendments to ARM 42.13.601 which are necessary for improved organization and clarity of the rule. As proposed, the amended content in (1) and (2) applies to all in-state breweries; in proposed (3) applies to breweries which produce less than 100 barrels; in proposed (4) applies to breweries which produce between 100 and 60,000 barrels; and in proposed (5) applies to breweries which produce 60,000 barrels or more. The department's non-substantive amendment to (4)(c) is necessary for consistency in language used in the department's rules.

Lastly, the department proposes to amend the implementing statutory citations for the rule to comply with the requirements of 2-4-305, MCA.

42.13.802 DISTILLERY - CONDITIONS FOR OPERATING (1) and (2) remain the same.

(3) In addition to all other requirements, a microdistillery shall:

(a) and (b) remain the same.

(c) prevent the consumption of alcoholic beverages in the manufacturing area or storage area except as authorized by federal laws;

(d) through (h) remain the same.

(4) In addition to all other requirements, a microdistillery that operates a sample room shall:

(a) and (b) remain the same.

(c) prevent the consumption or possession of alcoholic beverages on the premises between 8 p.m. and 10 a.m. by removing all alcoholic beverages other than those purchased in original packaging sold for off-premises consumption pursuant to (5) from individuals' possession by 8 p.m.; and

(d) regardless of the liquor product's alcohol content, provide no more than a combined total of 2 ounces of liquor products approved for labeling or exempt from labeling for on-premises consumption or prepared servings for curbside pickup to any individual during a business day.

(5) In addition to all other requirements, a microdistillery that conducts off-premises sales shall:

(a) ~~not sell alcoholic beverages through a drive-up window;~~

(b) remains the same but is renumbered (a).

~~(c) (b) sell alcoholic beverages only in an approved sample room except for curbside pickup, including a drive-through window, that were ordered online or through the phone;~~

(d) through (f) remain the same but are renumbered (c) through (e).

AUTH: 16-1-303, 16-1-424, MCA

IMP: 16-1-404, 16-3-301, 16-3-304, 16-3-305, 16-3-312, 16-4-311, 16-4-312, 16-4-501, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department also proposes amendments to ARM 42.13.802 for improved clarity through improved word choice/phrasing and section transitions. Proposed (4)(d) and (5)(b) implement HB 226's curbside pickup and use of a drive-through window, provided the window is noted on the floor plan and all other suitability and service requirements are met. Lastly, the department proposes to amend the implementing statutory citations for the rule to comply with the requirements of 2-4-305, MCA.

42.13.1102 ALL-BEVERAGES LICENSE - CONDITIONS FOR OPERATING

(1) In addition to all other alcoholic beverage licensing requirements, an all-beverages licensee shall:

(a) only purchase and possess on the premises liquor and fortified wine from an agency liquor store, beer from a beer wholesaler or brewery, and table wine from a table wine distributor or winery, except as permitted under 16-4-213 and 16-6-306, MCA, and described in (5);

(b) store alcoholic beverages only on the premises or in an approved noncontiguous alcoholic beverage storage area or resort alternate alcoholic beverage storage facility, as applicable;

(c) through (e) remain the same.

(f) prevent the consumption or possession of alcoholic beverages on the premises between 2 a.m. and 8 a.m. by removing all alcoholic beverages other than those purchased in original packaging or growlers sold for off-premises consumption pursuant to (2) from individuals' possession by 2 a.m.;

(g) remains the same.

(h) prevent the on-premises consumption of alcoholic beverages not sold or

provided at the premises and those sold in original packaging, prepared servings, or growlers for off-premises consumption, except as described in (5).

(2) An all-beverages licensee may sell alcoholic beverages for off-premises consumption only as follows under the following conditions:

(a) alcoholic beverages must be sold in original packaging, or individual servings, except that the retailer may fill and sell growlers with beer and table wine prepared servings filled at the time of sale, or growlers of beer or table wine filled at the time of sale; and

(b) the sale of alcoholic beverages must occur on the premises, except as provided in (3) and (4) ; the delivery of alcoholic beverages to the consumer off-site is prohibited.

(3) An all-beverages licensee may use curbside pickup, including a drive-through window, to sell alcoholic beverages that were ordered online or through the phone.

(4) An all-beverages licensee may deliver alcoholic beverages to a customer off-site under the following conditions:

(a) the licensee must apply for, and be issued, a delivery endorsement from the department. The application fee for the delivery endorsement is \$200;

(b) alcoholic beverage delivery is limited to beer and wine in original packaging. The delivery of liquor is prohibited;

(c) the licensee may deliver alcoholic beverages if the delivery includes food purchased from and prepared by the licensee. The purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food; and

(d) the licensee must use its employees who are 21 years of age or older for all food deliveries that include alcoholic beverages. Third-party delivery companies are prohibited.

(5) An all-beverages licensee may open and serve wine from a sealed bottle that was brought on to the premises by a patron and may charge a corkage fee.

AUTH: 16-1-303, MCA

IMP: 16-3-301, 16-3-303, 16-3-304, 16-3-305, 16-3-311, 16-3-312, 16-4-213, 16-4-405, 16-6-303, 16-6-306, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department also proposes amendments to ARM 42.13.1102 for improved clarity through improved word choice/phrasing and section transitions, to implement HB 705's expanded alcoholic beverage storage options in (1)(b) and expanded permissible bottle club activities for on-premises consumption retail licensees in (1)(a) and (5). Sections (1)(f) and (h) and (2) implement HB 226's servings definitions, curbside pickup including use of a drive-through window - provided the window is noted on the floor plan and all other suitability and service requirements are met - and clarify the sale of alcoholic beverages for off-premises consumption.

Proposed (4) implements the department's SB 320 delivery endorsement application process for an all-beverage licensee, establishes an application fee, and provides compliance criteria as a reiteration of the statute, as amended by SB 320.

42.13.1103 RESTAURANT BEER AND WINE LICENSE - CONDITIONS FOR OPERATING

(1) In addition to all other alcoholic beverage licensing requirements, a restaurant beer and wine licensee shall:

(a) only purchase and possess on the premises fortified wine from an agency liquor store, beer from a beer wholesaler or brewery, and table wine from a table wine distributor or winery, except as permitted under 16-6-306, MCA, and described in (5);

(b) store alcoholic beverages only on the premises or in an approved noncontiguous alcoholic beverage storage area;

(c) through (h) remain the same.

(i) prevent the consumption or possession of alcoholic beverages on the premises between 11 p.m. and 11 a.m. by removing all alcoholic beverages from individuals' possession by 11 p.m. other than those sold for off-premises consumption pursuant to (2);

(j) prevent the consumption or possession of alcoholic beverages on the premises by persons who are under 21 years of age or actually, apparently, or obviously intoxicated; and

(k) prevent the consumption of alcoholic beverages that were not purchased at the premises, except as described in (5); and.

~~(l) prohibit the sale of beer and wine for off-premises consumption.~~

(2) A restaurant beer and wine licensee may sell alcoholic beverages for off-premises consumption under the following conditions:

(a) food must be included in the purchase and the alcoholic beverages stated on the customer's bill;

(b) alcoholic beverages must be sold in original packaging, prepared servings, or growlers filled at the time of sale; and

(c) the sale of alcoholic beverages must occur on the premises, except for curbside pickup, including a drive-through window, that were ordered online or through the phone.

(3) A restaurant beer and wine licensee may deliver alcoholic beverages to a customer off-site under the following conditions:

(a) the licensee must apply for, and be issued, a delivery endorsement from the department. The application fee for the delivery endorsement is \$200;

(b) alcoholic beverage delivery is limited to beer and wine in original packaging;

(c) the delivery must include food purchased from and prepared by the licensee. The purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food; and

(d) the licensee must use its employees who are 21 years of age or older for all food deliveries that include alcoholic beverages. Third-party delivery companies are prohibited.

(2) (4) In addition to the requirements in (1) through (3), any restaurant for which a restaurant beer and wine license was not in effect as of April 9, 2009, shall:

(a) and (b) remain the same.

(5) A restaurant beer and wine licensee may open and serve wine from a sealed bottle that was brought on to the premises by a patron and may charge a corkage fee.

AUTH: 16-1-303, MCA

IMP: 16-3-301, 16-3-305, 16-3-311, 16-3-312, 16-4-405, 16-4-420, 16-6-306,
MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department also proposes amendments to ARM 42.13.1103 for improved clarity through improved word choice/phrasing and section transitions, to implement HB 705's expanded alcoholic beverage storage options in (1)(b) and expanded permissible bottle club activities for on-premises consumption retail licensees in (1)(a) and (5). Sections (1)(i) and (2) implement HB 226's servings definitions, curbside pickup including use of a drive-through window - provided the window is noted on the floor plan and all other suitability and service requirements are met - and clarify the sale of alcoholic beverages for off-premises consumption.

Proposed (3) implements the department's SB 320 delivery endorsement application process for a restaurant beer and wine licensee, establishes an application fee, and provides compliance criteria as a reiteration of the statute, as amended by SB 320.

Lastly, the department proposes to amend the implementing statutory citations for the rule to comply with the requirements of 2-4-305, MCA.

42.13.1104 ON-PREMISES CONSUMPTION BEER LICENSE -
CONDITIONS FOR OPERATING (1) In addition to all other alcoholic beverage licensing requirements, an on-premises consumption beer licensee shall:

(a) only purchase and possess on the premises beer from a beer wholesaler or brewery, except as permitted under 16-6-306, MCA, and described in (6);

(b) store alcoholic beverages only on the premises or in an approved noncontiguous alcoholic beverage storage area;

(c) through (e) remain the same.

(f) prevent the consumption or possession of alcoholic beverages on the premises between 2 a.m. and 8 a.m., by removing all alcoholic beverages other than those ~~purchased in original packaging or growlers~~ sold for off-premises consumption pursuant to (3) from individuals' possession by 2 a.m.;

(g) remains the same.

(h) prevent the on-premises consumption of alcoholic beverages not sold or provided at the premises and those sold ~~in original packaging or growlers~~ for off-premises consumption pursuant to (3).

(2) In addition to the requirements and exceptions in (1), an on-premises consumption beer licensee with a wine amendment shall:

(a) only purchase and possess on the premises fortified wine from an agency liquor store and table wine from a table wine distributor or winery, except as described in (6);

(b) and (c) remain the same.

(3) An on-premises consumption beer licensee and an on-premises consumption beer licensee with a wine amendment may sell alcoholic beverages for off-premises consumption ~~only as follows~~ under the following conditions:

(a) alcoholic beverages must be sold in original packaging, or individual servings, except that the retailer may fill and sell growlers with beer and table wine prepared servings filled at the time of sale, or growlers of beer or table wine filled at the time of sale; and

(b) except as provided in (5) and (6), the sale of alcoholic beverages must occur on the premises; the delivery of alcoholic beverages to the consumer off-site is prohibited.

(4) An on-premises consumption beer licensee and an on-premises consumption beer licensee with a wine amendment may use curbside pickup, including a drive-through window, to sell alcoholic beverages that were ordered online or through the phone.

(5) An on-premises consumption beer licensee and an on-premises consumption beer licensee with a wine amendment may deliver alcoholic beverages to a customer off-site under the following conditions:

(a) the licensee must apply for, and be issued, a delivery endorsement from the department. The application fee for the delivery endorsement is \$200;

(b) alcoholic beverage delivery is limited to beer and wine - depending on the license amendment - in original packaging;

(c) the licensee may deliver alcoholic beverages if the delivery includes food purchased from and prepared by the licensee. The purchase price of the delivered beer and wine - depending on the license amendment - may not exceed the purchase price of the delivered food; and

(d) the licensee must use its employees who are 21 years of age or older for all food deliveries that include alcoholic beverages. Third-party delivery companies are prohibited.

(6) An on-premises consumption beer licensee and an on-premises consumption beer licensee with a wine amendment may open and serve wine from a sealed bottle that was brought on to the premises by a patron and may charge a corkage fee.

AUTH: 16-1-303, MCA

IMP: 16-3-301, 16-3-303, 16-3-304, 16-3-305, 16-3-311, 16-3-312, 16-3-411, 16-4-104, 16-4-105, 16-4-405, 16-6-306, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department also proposes amendments to ARM 42.13.1104 for improved clarity through improved word choice/phrasing and section transitions, to implement HB 705's expanded alcoholic beverage storage options in (1)(b) and expanded permissible bottle club activities for on-premises consumption retail licensees in (1)(a), (2)(a), and (6). Sections (1)(f) and (h), (3), and (4) implement HB 226's servings definitions, curbside pickup including use of a drive-through window - provided the window is noted on the floor plan and all other suitability and service requirements are met - and clarify the sale of alcoholic beverages for off-premises consumption.

Proposed (5) implements the department's SB 320 delivery endorsement application process for a beer licensee or beer licensee with a wine amendment, establishes an application fee, and provides compliance criteria as a reiteration of

the statute, as amended by SB 320.

Lastly, the department proposes to amend the implementing statutory citations for the rule to comply with the requirements of 2-4-305, MCA.

FISCAL IMPACT: In accordance with 2-4-302(1)(c), MCA, the department is required to estimate the fiscal impact of the application fees in its amendments to ARM 42.13.1102, 42.13.1103, and 42.13.1104 together with the number of persons affected, if known.

Based on the fiscal note for SB 320, the department stated in 2021 that of the approximate 2,500 licensees that qualify for the delivery endorsement, 200 would seek approval for the endorsement. However, as of the filing of this rulemaking no licensees have applied or been approved for the endorsement; therefore, the department estimates 20 licensees will apply for the endorsement and the proposed processing fee would result in \$4,000 of general fund impact.

42.13.1105 OFF-PREMISES CONSUMPTION BEER AND TABLE WINE LICENSE - CONDITIONS FOR OPERATING (1) In addition to all other alcoholic beverage licensing requirements, an off-premises consumption beer and table wine licensee shall:

(a) remains the same.

(b) store beer and/or table wine only on the premises or in an approved noncontiguous alcoholic beverage storage area;

(c) through (e) remain the same.

(2) The sale of alcoholic beverages must occur on the premises. An off-premises consumption beer and/or table wine licensee may use curbside pickup, including a drive-through window, to sell alcoholic beverages that were ordered online or through the phone.

(2) remains the same but is renumbered (3).

(4) The delivery of alcoholic beverages by an off-premises consumption beer and table wine licensee to the consumer off-site is prohibited.

AUTH: 16-1-303, MCA

IMP: 16-3-301, 16-3-304, 16-3-305, 16-3-312, 16-4-115, 16-4-402, 16-4-405, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department also proposes amendments to ARM 42.13.1105 to implement HB 705's expanded alcoholic beverage storage options in (1)(b). Proposed (2) implements HB 226's curbside pickup including use of a drive-through window - provided the window is noted on the floor plan and all other suitability and service requirements are met. The department proposes (4) as a necessary reiteration of the statutory restriction that delivery of alcoholic beverages excludes off-premises consumption beer and table wine licensees.

Lastly, the department proposes to amend the implementing statutory citations for the rule to comply with the requirements of 2-4-305, MCA.

42.13.1202 BEER WHOLESALER AND TABLE WINE DISTRIBUTOR -

CONDITIONS FOR OPERATING (1) In addition to all other alcoholic beverage licensing requirements, a beer wholesaler and table wine distributor shall:

(a) through (c) remain the same.

(d) except as provided in ~~(2)~~ 16-3-219 and 16-3-418, MCA, deliver alcoholic beverages using its own employees, trucks, and equipment;

(e) remains the same.

(f) sell and deliver beer, table wine, and sacramental wine under its Montana license only to other licensed wholesalers or distributors, licensed alcoholic beverage retailers, catered events of a licensed alcoholic beverage retailer, agency liquor stores, and special events for a special permit holder, and approved noncontiguous alcoholic beverage storage areas or resort alternate alcoholic beverage storage facilities. This does not in any way prohibit the licensee from operating in compliance with other state or federal law;

(g) through (i) remain the same.

~~(2) When a beer wholesaler or table wine distributor's trucks and equipment are incapable of delivering alcoholic beverages to a retail licensee's premises due to the unique physical location of the retail licensee's premises – examples of which are premises located on an island or atop a mountain – the beer wholesaler or table wine distributor and retail licensee may seek prior department approval for an alternative delivery arrangement on a form provided by the department. If the department approves the alternative delivery arrangement request, the department shall provide the beer wholesaler or table wine distributor and the retail licensee a written summary of the conditions of the approved delivery arrangement. Failure to comply with the approved alternative delivery arrangement may subject the beer wholesaler, table wine distributor, or retail licensee to administrative action.~~

(3) and (4) remain the same but are renumbered (2) and (3).

AUTH: 16-1-303, MCA

IMP: 16-3-212, 16-3-219, 16-3-231, 16-3-232, 16-3-242, 16-3-301, 16-3-404, 16-3-406, 16-3-418, 16-4-103, 16-4-106, 16-4-108, 16-4-402, 16-4-415, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to amend ARM 42.12.1202(1)(d) to reflect HB 226's amendments to 16-3-219 and 16-3-418, MCA, regarding dock sales restrictions and exceptions. Amendments to (1)(f) are necessary to reflect HB 705's expanded alcoholic beverage storage options. The department also proposes to remove ARM 42.13.1202(2) because that content is contained in the statutes cross-referenced in (1)(d) and is unnecessarily redundant in the rule.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., August 22, 2022.

7. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors of House Bills 157, 226, 525, 705 and Senate Bill 320 were contacted by email on the following dates:

(1) Representative Marshall, sponsor of HB 157, was notified via email on July 21, 2021, and on July 8, 2022.

(2) Representative Zolnikov, sponsor of HB 226, was notified via email on July 21, 2021, and on July 8, 2022.

(3) Representative Buttrey, sponsor of HB 525 and HB 705, was notified via email on July 21, 2021, and on July 8, 2022.

(4) Senator Boldman, sponsor of SB 320, was notified via email on July 21, 2021, and on July 8, 2022.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules may significantly and directly impact small businesses, but any such impact is tied to the department's implementation of the underlying legislation and not the rulemaking itself, excepting the fiscal impact of the SB 320 delivery endorsement application and processing fees which the department contends is reasonable and consistent with other license endorsement fees.

/s/ Todd Olson

Todd Olson
Rule Reviewer

/s/ Brendan Beatty

Brendan Beatty
Director of Revenue

Certified to the Secretary of State July 12, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and the amendment of ARM 42.20.102 pertaining to property tax exemption process revisions) NOTICE OF PUBLIC HEARING ON
) PROPOSED ADOPTION AND
) AMENDMENT
)

TO: All Concerned Persons

1. On August 15, 2022, at 11:00 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on July 29, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY. ARM 42.20.102 is the department's sole rule regarding the property tax exemption application process and supporting documentation requirements. In the department's review of its administrative rules for the Governor's Red Tape Relief Initiative, the department observes that as a result of prior rulemaking efforts, some of the rule's content has become redundant to statute, lacks a desired level of cohesion, and may be difficult for the public to understand. Based on these observations, the department believes it is necessary to propose the separation of the additional documentation requirements of ARM 42.20.102(9)(a) through (b)(i), (10)(a) through (d), (11)(a), (12)(a) and (b), (13)(a), (13)(b)(iii), (14), (15), and (16) and transfer them into New Rule I. The proposed amendments to ARM 42.20.102 incorporate and clarify the statutory exemptions that are subject to the requirements of the exemption application process and provide a clearer description of the process itself because the rule will focus on the application process.

While this general statement of reasonable necessity covers the basis for the following proposed rulemaking, it is supplemented below, where necessary, to explain rule-specific changes.

4. The rule as proposed to be adopted provides as follows:

NEW RULE I ADDITIONAL DOCUMENTATION REQUIREMENTS FOR PROPERTY TAX EXEMPTION APPLICATIONS (1) In addition to the property tax exemption application requirements of ARM 42.20.102, a property owner of record,

the property owner's agent, or a federally recognized tribe must submit with its application the additional documentation provided in (2) through (17), as applicable, based on the specific use of the property.

(2) For property used for religious purposes:

(a) proof that the buildings and furnishings are owned by a church and are used for actual religious worship or for the residences of the clergy;

(b) proof that the church's land parcel does not exceed 15 acres or one acre for a clergy residence when the land and improvements are used for educational or youth recreational activities, and are available for public use; and

(c) proof the resident of the parsonage is a member of the clergy, such as a certificate of ordination or license.

(3) For property owned by a federally recognized tribe and used for religious purposes, a copy of the tribal resolution that designates the land and the improvements upon the land, not to exceed 15 acres, as sacred land to be used exclusively for religious purposes.

(4) For property owned and used exclusively for agricultural and horticultural societies, documentation verifying the property is not operated for gain or profit.

(5) For property used exclusively for educational purposes, including dormitories and food service buildings for the use of students in attendance and other structures necessary for the operation and maintenance of an educational institution:

(a) proof the property does not exceed 80 acres;

(b) verification that the organization is not operated for gain or profit;

(c) a copy of the applicant's attendance policy and curriculum with systematic instruction; and

(d) a copy of the lease agreement if the property is not owned by the educational organization.

(6) For property of any acreage used for educational purposes and owned by a tribal corporation created for the sole purpose of establishing schools, colleges, and universities, the documentation stated in (5).

(7) For property used exclusively for nonprofit healthcare facilities:

(a) a copy of the healthcare facility's license from the Department of Public Health and Human Services; and

(b) a copy of the lease agreement if the property is not owned by the non-profit organization.

(8) For property used solely in connection with cemeteries:

(a) documentation of a permanent care and improvement fund as provided in Title 35, chapter 20, part 3, MCA; and

(b) verification that the property is not maintained or operated for gain or profit.

(9) For property owned by a purely public charity with acreage not exceeding 160 acres, or where the applicant is requesting an 8-year exemption for up to 15 acres:

(a) a copy of the lease agreement if leasing the property from a governmental organization; and

(b) verification the property is directly used for purely public charitable purposes.

(10) For property owned by public museums, art galleries, zoos, and observatories:

- (a) verification that the property is not operated for gain or profit;
- (b) verification that the real and personal property is reasonably necessary for use in connection with the public display or observatory use; and
- (c) if the property is owned by individuals, documentation verifying the property is actually used by the governmental entity or nonprofit organization as a part of its public display, held for future display, or used to house or store a public display.

(11) For property owned by an organization that operates facilities exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment, verification that the organization is not operated for gain or profit.

(12) For property owned by an organization that operates facilities for the care of retired, aged, or chronically ill:

- (a) verification that the organization is not operated for gain or profit; and
- (b) verification that the residents meet the age and gross household income requirements provided in 15-30-2338, MCA.

(13) For property used for parks and recreational facilities:

- (a) verification that the park or recreational facility is open to the public;
- (b) verification that the property consists only of land - with no buildings - and is leased to a municipality or taxing unit for less than \$100 a year;
- (c) verification that the property, not to exceed 10 acres, is used exclusively as a public park, for recreation, or for landscape beautification purposes; and
- (d) if the applicant is a federally recognized tribe, a copy of a tribal resolution that designates the property as park land, not to exceed 640 acres, or to be used exclusively for recreational facilities.

(14) For property used by a veterans' society or organization, as provided in 15-6-203, MCA, and the applicant is other than the society or organization, the applicant must provide a copy of the lease verifying the savings from the property tax exemption is realized by the society or organization.

(15) For property owned by a nonprofit community service organization, the applicant must provide verification that the organization has been an active community service continuously from January 1, 1981, in accordance with 15-6-209(2), MCA.

(16) For property used for low-income housing, as provided in 15-6-221, MCA:

- (a) verification that the property is dedicated to providing affordable housing to low-income tenants; and
- (b) a copy of the hearing minutes or newspaper notification, that a public hearing was held to consider whether the property meets a community housing need.

(17) For property used for low-income housing and is owned and operated by an entity with the ownership structure described in 15-6-221(1)(a)(i), MCA:

- (a) a copy of the IRS tax exemption status letter, if a limited partnership, stating the general partner is a nonprofit corporation with an IRS 501(c)(3)

exemption;

(b) a copy of the Montana Board of Housing letter allocating low-income tax credits;

(c) a copy of the deed or other legally binding document that restricts the property's usage;

(d) verification that at least 20 percent of the residential units are rent-restricted and rented to tenants whose household incomes do not exceed 50 percent of the median family income for the county, or at least 40 percent of the residential units are rent-restricted to persons whose household incomes do not exceed 60 percent of the median income for the county;

(e) a letter stating that the property meets a public purpose in providing housing to an underserved population; and

(f) a copy of the owner's partnership or operating agreement, or other documentation, that provides that at the end of the compliance period, as that term is defined in 26 U.S.C. 42, the ownership of the property may be transferred to the nonprofit corporation or housing authority general partner.

(18) For property used for low-income housing and owned and operated by a nonprofit corporation, as described in 15-6-221(1)(b), MCA, the applicant must provide verification that the property was constructed using a home investment partnership program grant.

AUTH: 15-1-201, MCA

IMP: 15-6-201, 15-6-203, 15-6-209, 15-6-221, 15-6-235, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity, the department proposes to adopt New Rule I to specify additional documentation requirements from those general requirements provided in ARM 42.20.102 for taxpayers seeking property tax exemptions authorized under 15-6-201, MCA. New Rule I will also clarify the department's interpretation of 15-6-201, MCA, in its review of exemption applications. The department also anticipates New Rule I will increase exemption application review efficiency and decrease procedural "red tape" because more clearly stated requirements improve applicant understanding of processes and application requirements.

The department also proposes to include additional documentation requirements in (18) which are necessary to implement statutory changes made under House Bill 432 (2021) (HB 432). HB 432 provides for a property tax exemption for affordable housing owned and operated by a nonprofit corporation constructed using federal grants, and the rule section states a necessary applicant requirement of documentation to verify the property qualifies for the exemption.

5. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

42.20.102 PROPERTY TAX EXEMPTION APPLICATIONS PROCESS AND REQUIREMENTS FOR PROPERTY TAX EXEMPTIONS ~~(1) The property owner of record, the property owner's agent, or a federally recognized tribe must file an application for a property tax exemption on a form available from the local~~

department office before March 1, except as provided in ARM 42.20.118, of the year for which the exemption is sought. Applications postmarked after March 1 will be considered for the following tax year only, unless the department determines any of the following conditions are met:

~~(a) the taxpayer receives notice by way of an AB-34 (Removal of Property Tax Exemption) that the property will be placed on the tax roll. The taxpayer shall have 30 days after receipt of the notice to submit an application for exemption; or~~

~~(b) the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness; and~~

~~(c) the applicant can demonstrate, while not necessarily continuous, the impediment(s) existed at sufficient levels in the period of January 1 to March 1, of the tax year in which the applicant is applying, to prevent timely filing of the application.~~

(1) A property owner of record, their agent, or a federally recognized tribe who seeks a property tax exemption authorized under 15-6-201, 15-6-203, 15-6-209, 15-6-221, and 15-6-227, MCA, must submit a department property exemption application form (application) and provide the department with the documents and information specific to the property type and the exemption sought, as required by this rule and [NEW RULE I].

(2) All applications submitted to the department for property owned by an applicant as of January 1 must be postmarked no later than March 1 of the year in which the exemption is sought.

(3) All applications postmarked after March 1 will be considered for the following tax year only, except as provided in (a) and (b).

(a) If an applicant acquires ownership of the property after January 1 but before March 1, the application must be submitted and postmarked no later than 30 days after the acquisition date. For example, an applicant who acquires ownership of property on February 15, must submit an application postmarked no later than March 17.

(b) If an applicant is applying for an exemption in response to the department's written notification that the property will be placed on the tax roll for the current tax year, the application must be postmarked no later than 30 days after the date of the department's notice. For example, an applicant who is notified by the department on February 15 of the property's placement on the tax roll, must submit an application postmarked no later than March 17.

~~(2) (4) The department may extend the March 1 deadline to June 1, if:~~

~~(a) if the applicant was unable to apply for the current year before March 1 due to an physical or mental infirmity that existed between January 1 and June 1 of the tax year in which the applicant is applying that prevented timely filing of the application; or~~

~~(3) (b) The department may extend the March 1 deadline to June 1, on a case-by-case basis, if there is new construction on the property, on the application which was exempt in a prior year, and in which case the applicant must:~~

~~(a) (i) submits a written statement, plus any supporting documentation, explaining any circumstances that prevented timely filing of the application; and~~

(b) (ii) provides a completed application, including all applicable supporting documentation, ~~postmarked no later than June 1 of the year for which benefit is sought in accordance with this rule.~~

(4) ~~(5)~~ For each application submitted, the applicant must:

(a) remains the same.

~~(b) explain how the applicant qualifies for the property tax exemption; and~~

~~(c) (b) state the specific and actual use of the real or personal property;~~

~~(c) provide a copy of a recorded deed, or a contract for deed, or other legally sufficient document identifying ownership if the application is for a real property exemption;~~

~~(d) provide a photograph of the property;~~

~~(e) provide a copy of the title of motor vehicle or mobile home, or, if title is not applicable, a letter identifying ownership, if the application is for a personal property exemption; and~~

~~(f) include the additional documents required for the specific property type described in [New Rule I].~~

~~(5) (6) The following documents must accompany all applications, unless the applicant is a federally recognized tribe. If, the applicant must also provide:~~

~~(a) is incorporated, a copy of the applicant's articles of incorporation in the case of an entity applicant, a copy of the applicant's organizational documents, such as articles of incorporation, articles of organization, or partnership agreement;~~

~~(b) is not incorporated, a copy of the applicant's constitution or by laws;~~

~~(c) (b) has been granted verification of tax-exempt status by the Internal Revenue Service (IRS), a copy of the applicant's tax-exempt status letter (501 determination); or~~

~~(d) has not been granted tax-exempt status by the IRS, the applicant must provide a written statement explaining why such the exemption does not exist verification is not available.~~

~~(6) (7) A federally recognized tribe must include a tribal resolution must accompany all applications submitted by a federally recognized tribe that:~~

~~(a) remains the same.~~

~~(b) states the type of exemption the tribe is requesting; and~~

~~(c) states how the property qualifies for the exemption; and~~

~~(d) remains the same but is renumbered (c).~~

~~(7) For personal property exemption applications, the following documents must accompany all applications:~~

~~(a) a copy of the title of motor vehicle or mobile home; or a letter identifying ownership, if title is not applicable; and~~

~~(b) a photograph of the property.~~

~~(8) For real property exemption applications, the following documents must accompany the applications:~~

~~(a) a copy of a fully executed deed, or a contract for deed, or a notice of purchaser's interest, or a security agreement identifying ownership.~~

~~(9) For real property exemption applications where the applicant is requesting exemption of property used for religious purposes, the following documents must accompany the application:~~

~~(a) if the application seeks exemption for parsonage, proof that the resident of the building identified as a parsonage is a member of the clergy; or~~

~~(b) if the applicant is a federally recognized tribe, a copy of the tribal resolution:~~

~~(i) identifying the fee land by legal description, not to exceed 15 acres, as sacred land to be used exclusively for religious purposes;~~

~~(ii) stating the type of exemption the tribe is requesting; and~~

~~(iii) stating how the property qualifies for this type of exemption.~~

~~(10) For real property exemption applications where the applicant is requesting exemption of property used for educational purposes, the following documents must accompany the application:~~

~~(a) documentation verifying the entity is not operated for gain or profit;~~

~~(b) a copy of the applicant's attendance policy;~~

~~(c) a copy of the applicant's curriculum which identifies the applicant's systematic course of instruction;~~

~~(d) for property, of any acreage, owned by a tribal corporation created for the sole purpose of establishing schools, colleges, and universities (a) through (c) must accompany the tribe's application; and~~

~~(e) if the applicant is a federally recognized tribe, a copy of the tribal resolution:~~

~~(i) identifying the fee land, by legal description, to be used exclusively for educational purposes;~~

~~(ii) stating the type of exemption the tribe is requesting; and~~

~~(iii) stating how the property qualifies for this type of exemption.~~

~~(11) For real property exemption applications where the applicant is requesting exemption of property used for nonprofit healthcare facilities, the following documents must accompany the application:~~

~~(a) a copy of the health care facility's license from the Department of Public Health and Human Services; or~~

~~(b) if the applicant is a federally recognized tribe, a copy of the tribal resolution:~~

~~(i) identifying the fee land, by legal description, to be used exclusively for health care services;~~

~~(ii) stating the type of exemption the tribe is requesting; and~~

~~(iii) stating how the property qualifies for this type of exemption.~~

~~(12) For real property exemption applications where the applicant is requesting exemption of property used solely in connection with a cemetery or cemeteries, the following documents must accompany the application:~~

~~(a) proof of a permanent care and improvement fund;~~

~~(b) verification that the entity is not operated for gain or profit; and~~

~~(c) if the applicant is a federally recognized tribe, a copy of the tribal resolution:~~

~~(i) identifying the fee land, by legal description, to be used exclusively as a cemetery or cemeteries;~~

~~(ii) stating the type of exemption the tribe is requesting; and~~

~~(iii) stating how the property qualifies for this type of exemption.~~

~~(13) For real property exemption applications submitting use for parks and recreational facilities, the following documents must accompany the applications:~~

~~(a) documentation verifying the park and/or recreational facility is open to the general public; or~~

~~(b) if a federally recognized tribe, a tribal resolution:~~

~~(i) identifying the fee land, by legal description, to be used exclusively for parks and recreational facilities;~~

~~(ii) including language stating the type of exemption the tribe is requesting; and~~

~~(iii) including language stating how the property qualifies for this type of exemption, not to exceed 640 acres.~~

~~(14) For real property exemption applications where the applicant is requesting an 8-year exemption for up to 15 acres of property owned by a purely public charity, as set forth in 15-6-201, MCA, the following apply:~~

~~(a) all documents in (4), (5), and (8) must be submitted with the application;~~

~~(b) the exemption applies to only the general taxes, not the special fees and assessment charges imposed by the local governments;~~

~~(c) upon the department's approval of the 8-year exemption, the department will file a notice of exemption with the clerk and recorder in the county where the property is located. The notice shall:~~

~~(i) indicate that the exemption has been granted;~~

~~(ii) describe the penalty for default; and~~

~~(iii) specify that default will create a lien on the property by operation of law;~~

~~(d) the department shall notify the applying entity that the application has been approved and a notice of exemption on the property has been filed with the county clerk and recorder;~~

~~(e) an organization granted an 8-year exemption must notify the department on an annual basis by March 1 whether the property has been placed into a public charitable use;~~

~~(f) if an organization has been granted the 8-year exemption the application stated in (1) does not extend the 8-year timeline;~~

~~(g) for property not used directly for the charitable purpose intended within the 8-year exemption period, or for property sold or transferred before it is entered into direct charitable use, the exemption is revoked and the property is taxable as follows. If the property:~~

~~(i) has completed the 8 years without being placed into a public charitable purpose, the tax will be calculated using the current year's ad valorem tax multiplied by 8 years; or~~

~~(ii) has been sold or the exemption status is revoked prior to the end of the 8-year period, the tax will be calculated using the current year's ad valorem tax multiplied by the number of years the property was exempt before the date of sale or revocation. For example, if the property was exempt for 4 years of the approved 8-year period, the tax will be the current year's ad valorem tax multiplied by 4; and~~

~~(h) upon default and removal of the 8-year exemption, the department will inform the county clerk and recorder that a lien was created on the property by operation of law, and inform the county treasurer that the lien on the property is being executed and that taxes will be due.~~

~~(15) For real property exemption applications where the applicant is requesting exemption for property used for low-income housing, as set forth in 15-6-221, MCA, all documents in (4), (5), and (8) must be submitted with the application and also include:~~

~~(a) documentation that the property is dedicated to providing affordable housing to low-income tenants;~~

~~(b) a copy of the IRS tax exemption status letter (if a limited partnership general partner is a nonprofit corporation with an IRS 501(c)3 exemption);~~

~~(c) a copy of the Board of Housing letter allocating low-income tax credits;~~

~~(d) documentation that at least 20 percent of the residential units are rent-restricted and rented to tenants whose household incomes do not exceed 50 percent of the median family income for the county, and at least 40 percent of the residential units are rent restricted to persons whose household incomes do not exceed 60 percent of the median income for the county;~~

~~(e) a copy of the deed or other legally binding document that restricts the property's usage;~~

~~(f) a letter stating that the property meets a public purpose in providing housing to an underserved population and provides a minimum of 50 percent of the units in the property to tenants at 50 percent of the median family income for the area, with rents restricted to a maximum of 30 percent of 50 percent of median family income;~~

~~(g) a copy of the owner's partnership or operating agreement or accompanying document providing that at the end of the compliance period, the ownership of the property may be transferred to the nonprofit corporation or housing authority general partner; and~~

~~(h) documentation, such as the hearing minutes or newspaper notification, that a public hearing was held to consider whether the property meets a community housing need.~~

~~(16) For real property exemption applications where the applicant is requesting exemption for property used by a veterans' society or organization, as set forth in 15-6-203, MCA, and the applicant is someone other than the society or organization, the applicant must include a copy of the lease that verifies the savings from the property tax exemption is realized by the society or organization. For tax year 2017 only, the deadline to submit an exemption application is December 31, 2017.~~

~~(17) (8) Upon receipt of the application and supporting the documents and information required by this rule and [NEW RULE I], the local department office will perform a field evaluation. The department will approves or deny denies the application and notify notifies the applicant, the local department office, and the county treasurer of its decision, in writing, as provided in 15-6-235, MCA.~~

~~(9) Approved exemptions apply to ad valorem (general) taxes only; organizations are responsible for any special fees or assessments charged by local taxing jurisdictions.~~

~~(18) (10) If the property is owned by a governmental entity (such as city, county, or state), the federal government (unless Congress has passed legislation allowing the state to tax property owned by a federal entity), tribal government, nonprofit irrigation districts organized under Montana law, municipal corporations,~~

public libraries, or rural fire districts and other entities providing fire protection under Title 7, chapter 33, MCA, ~~the department will employ the following exemption criteria apply for real property when considering exemption claims based upon 15-6-201, MCA:~~

~~(a) the properties will be tax-exempt as of the purchase date that is reflected on the deed or security agreement~~ property must be assessed and taxed from the date of change from a nontaxable status to a taxable status, as required under 15-16-203, MCA;

(b) if a the property is tax-exempt as of January 1 of the current tax year and is sold to a nonqualifying purchaser after January 1 of the current tax year, it becomes taxable upon the date of transfer of the property to the nonqualifying purchaser. The tax is prorated according to 15-16-203, MCA;

(c) if a property is tax-exempt, as ~~stated in (14)(b)~~, and is sold as tax-deed property to a nonqualifying purchaser after January 1 of the current tax year, it becomes taxable on January 1 following the execution of such contract or deed as provided in 7-8-2307, MCA; and

(d) if a tribal government is requesting an exemption of an essential government service, as provided by statute in 15-6-201, MCA, that service must be identified in the application.

AUTH: 15-1-201, MCA

IMP: 7-8-2307, 15-6-201, 15-6-203, 15-6-209, ~~15-6-216~~, 15-6-221, ~~15-6-233~~, 15-6-235, ~~15-6-311~~, ~~15-7-102~~, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity provided above, the department proposes to amend ARM 42.20.102 which is necessary to incorporate the statutory exemptions that are subject to the requirements of the rule and clarify the exemption application process.

Section (1), as amended, clarifies that only those exemptions in the cross-referenced statutes are subject to the application process in the rule. All other statutory exemptions are granted by operation of law or a different approval process. Proposed (1) defines the scope of property tax exemption application requirements and cross-references New Rule I authority for additional documentation requirements which are based on the type of exemption sought.

Proposed (2) is proposed to clearly state January 1 is the date the department uses to determine a property's ownership for assessment purposes and March 1 is the standard deadline for the submission of an exemption application for the current year.

Proposed (3) is proposed to reflect application submission situations that may not occur before March 1, such as when a taxpayer's exemption application is in direct response to the department's notice that the subject property will return to the tax rolls. Section (3) also reflects the discontinuation of the AB-34 form as a means of correspondence with the taxpayer from stricken (1)(a) and provides an alternate application deadline in these cases.

The department's amendments to proposed (4) are necessary for brevity and clarity regarding application extensions for delays based on applicant infirmity which are in current (1)(b) and (c) and the current text of the section, or when new

construction is added to property that was exempt in the prior year. Since the department has discretion in extending exemption application deadlines, removing the case-by-case basis text minimizes confusion and eliminates potentially inconsistent discretionary decisions.

The department proposes several amendments in proposed (5) for improved subject matter organization through the relocation of content from (7)(a) and (b), and (8)(a). The department also proposes a necessary amendment to proposed (5)(b) for consistency with ARM 42.19.506, which requires a use test for certain property tax exemptions. The insertion of proposed (5)(f) is necessary to address potential documentation requirements for submission of a property tax exemption application under the rule, for internal consistency, and to include a necessary cross-reference to New Rule I due to the relocation of content.

Sections (6) and (7) are proposed as a general restatements, or clarifications, of application requirements that apply to entities and federally recognized tribes, respectively, because the existing text is disjointed and should be improved through a change in the writing style.

In connection with the transfer of content for (9) through (15) to New Rule I, as described in the statement of general necessity, the department also proposes to remove current (9)(b)(ii), (10)(e)(i) through (iii), (11)(b)(i) through (iii), (12)(c)(i) through (iii), and (13)(b)(i) and (ii) as the requirements are provided elsewhere in the rule, such as for federally recognized tribes in proposed (7).

In current (16), the department proposes to remove a portion of the text and the year reference to tax year 2017 as it is obsolete and unnecessary. The relevant, remaining substance of (16) is proposed for transfer to (13) of New Rule I.

The department has amended proposed (8) because the local department office no longer needs a separate notification as they have access to the department's computer assisted mass appraisal (CAMA) system that is updated when an exemption application is approved or denied. The department has also amended the section to reflect current business processes and add a cross-reference to 15-6-235, MCA, as support for the rule.

In proposed (9), the department proposes the transfer of text from (14)(b) for improved organization and to improve clarity that only the ad valorem (general) taxes are exempt if a property tax exemption application is approved and any special fees or assessments at the local county level are the responsibility of the property owner.

The department also proposes amending text and a cross-reference to statute in proposed (10) because the governmental organizations identified in the section are not subject to the property tax exemption process. The department also proposes minor amendments to improve general readability of the rule.

Finally, it is necessary for the department to propose striking implementing citations for 15-6-216, 15-6-233, 15-6-311, and 15-7-102, MCA, because they are obsolete or are unrelated references to this rule.

6. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696;

or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., August 22, 2022

7. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 6 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Gunderson, was contacted by email on February 3, 2022, and again on July 11, 2022.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State July 12, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.15.314 and 42.23.303) PROPOSED AMENDMENT
pertaining to adopting the Multistate)
Tax Commission's Model Statute for)
Reporting Adjustments to Federal)
Taxable Income and Federal)
Partnership Audit Adjustments)

TO: All Concerned Persons

1. On August 15, 2022, at 12:00 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on July 29, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.15.314 CHANGES IN FEDERAL TAXABLE INCOME (1) When a taxpayer's federal taxable income is changed or corrected by the IRS, or other authority, the taxpayer must file an amended return within ~~90~~ 180 days after ~~receiving notice from the IRS~~ the final determination date.

(2) When a taxpayer changes his or her own federal taxable income by amending his or her federal income tax return, the taxpayer must file an amended return reporting these changes within ~~90~~ 180 days after filing the federal amended tax return.

(3) remains the same.

AUTH: 15-30-2620, 15-30-3404, MCA

IMP: 15-1-216, 15-30-2605, 15-30-2606, 15-30-2619, 15-30-3403, MCA

42.23.303 CHANGE IN FEDERAL TAX OR RETURN (1) Taxpayers are required to report to the department adjustments or corrections to their taxable income made by the IRS or other competent authority by filing an amended Montana corporate income tax return within ~~90~~ 180 days ~~after receiving official notice of such~~

~~change or correction of the final determination date.~~ If the adjustments or corrections result in an overpayment of tax, the refund claim must be made within the statute of limitation set forth in 15-31-509, MCA.

(a) If the taxpayer files an amended Montana corporate income tax return or a federal adjustments report more than ~~90~~ 180 days after ~~receiving official notice the final determination date~~ and has not by written agreement suspended the federal statute of limitations, the period within which a deficiency in tax may be assessed extends for three years from the date the changes or corrections in the taxpayer's federal taxable income become final and are filed with the department or three years from the date the amended federal return was filed.

(b) If the taxpayer fails to file an amended Montana corporate income tax return or a federal adjustments report ~~after receiving official notice~~, the department may at any time assess tax or begin a proceeding in court for the collection of the tax without assessment pursuant to 15-31-544, MCA.

(2) If a taxpayer files an amended federal income tax return for any year changing or correcting its taxable income, the taxpayer is required to file a corresponding amended Montana corporate income tax return within ~~90~~ 180 days after filing the amended federal return. If the adjustments or corrections result in an overpayment of tax, the refund claim must be made within the statute of limitations set forth in 15-31-509, MCA.

(a) If the taxpayer files an amended Montana corporate income tax return or a federal adjustments report more than ~~90~~ 180 days after filing the amended federal return and has not by written agreement suspended the federal statute of limitations, the period within which a deficiency in tax may be assessed extends for three years from the date the amended Montana return is filed.

(b) If the taxpayer fails to file an amended Montana corporate income tax return or a federal adjustments report, the department may at any time assess tax or begin a proceeding in court for the collection of the tax without assessment pursuant to 15-31-544, MCA.

(3) and (4) remain the same.

AUTH: 15-31-501, MCA

IMP: 15-30-3401, 15-31-506, 15-31-509, 15-31-544, MCA

REASONABLE NECESSITY: The 67th Montana Legislature enacted House Bill 53 (HB 53) which adopted the Multistate Tax Commission's Model Statute for Reporting Adjustments to Federal Taxable Income and Federal Partnership Audit Adjustments and created new statutes which were codified in Title 15, chapter 30, part 34, Montana Code Annotated.

Based on the passage of HB 53, it is necessary for the department to propose amendments to ARM 42.15.314 and 42.23.303 to implement the new reporting requirements, as identified in HB 53. The department also proposes some minor text edits for clarity and for consistency with current department rule writing styles. Finally, the department proposes to amend the statutory citations corresponding to the rule as required by 2-4-305(3), MCA.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., August 22, 2022.

5. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Hamilton, was contacted by email on April 26, 2022, and again on July 11, 2022.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Todd Olson

Todd Olson
Rule Reviewer

/s/ Brendan Beatty

Brendan Beatty
Director of Revenue

Certified to the Secretary of State July 12, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.2.510 pertaining to the) PROPOSED AMENDMENT
extension of deadlines for a taxpayer)
to appeal an audit determination or a)
final determination)

TO: All Concerned Persons

1. On August 15, 2022, at 1:00 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on July 29, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

42.2.510 REVIEW OF NOTICE OF ASSESSMENT (NOA) (1) remains the same.

(2) The department will provide notification by mailing the NOA to the taxpayer as prescribed in 15-1-211, MCA. Information provided on the NOA shall advise the taxpayer of the requirement to file a Request for Informal Review (Form APLS101F) or a written objection to the NOA with the department within ~~30~~ 45 days from the date of the NOA; and that failure to file a written objection within the ~~30~~ 45 days shall be deemed an admission that the debt stated in the NOA is due and owing.

(a) remains the same.

(b) If the taxpayer does not pay or respond to the NOA as required in (2), a letter will be sent to the taxpayer requesting payment within ~~30~~ 45 days of the date of the letter or a Warrant for Dstraint may be issued pursuant to 15-1-702, MCA.

(c) and (d) remain the same.

(3) The taxpayer must submit to the department an objection to the NOA within ~~30~~ 45 days of the date on the NOA. If the objection is sent by the U.S. Postal Service or by any other generally accepted delivery service, the objection must be postmarked within ~~30~~ 45 days of the date of the NOA. If it is sent by e-mail, it must be sent within ~~30~~ 45 days of the date of the NOA. Failure to respond within the ~~30~~

45 days shall be deemed an admission that the debt stated in the NOA is due and owing.

(a) through (4) remain the same.

(5) The department shall review the objection and determine whether the department agrees or disagrees with the taxpayer's objections. The department shall mail written notice to the taxpayer advising the taxpayer of the department's determination within ~~30~~ 45 days after receipt of the objection.

(a) remains the same.

(b) If the department disagrees with the taxpayer, it shall explain the reasons for the disagreement in a Notice of Determination, notify the taxpayer of the dispute resolution procedures, and provide a copy of the Notice of Referral to the Office of Dispute Resolution (Form APLS102F). The department shall also notify the taxpayer that the taxpayer must submit Form APLS102F or any other written objection to the department within ~~30~~ 45 days of the date on the Notice of Determination from the department, and that the taxpayer will forfeit the right to a hearing if the taxpayer fails to submit Form APLS102F or any other written objection within the ~~30-45~~-day period.

(c) If the department does not issue a Notice of Determination within the 45-day period provided in this rule, and an extension has not been previously agreed to between the parties, the taxpayer's appeal for the period identified in the NOA is deemed granted. An appeal that is deemed granted on this basis does not prohibit the department from making the same adjustment(s) identified in the underlying NOA in a different tax period.

(6) If the taxpayer disagrees with the department's determination, the taxpayer must submit Form APLS102F or any other written objection within ~~30~~ 45 days of the date on the Notice of Determination to request a hearing before the Office of Dispute Resolution (ODR). Appeals should be mailed to the Department of Revenue, Office of Dispute Resolution, P.O. Box 5805, Helena, Montana 59604 or e-mailed to dordisputeresolution@mt.gov. If the objection is sent by the U.S. Postal Service or by any other generally accepted delivery service, the objection must be postmarked within ~~30~~ 45 days of the date of the department's Notice of Determination. If it is sent by e-mail, it must be sent within ~~30~~ 45 days of the date of the department's Notice of Determination.

(a) Failure by the taxpayer to file an appeal within ~~30~~ 45 days of the date of the department's Notice of Determination shall be deemed an admission that the debt stated in the NOA is due and owing.

(b) through (8) remain the same.

~~(9) If the department fails to comply with the deadlines in this rule, the taxpayer may immediately refer the matter to the ODR.~~

AUTH: 15-1-201, 15-1-211, 15-1-701, 15-31-501, 15-35-122, 15-36-322, 15-39-114, MCA

IMP: 15-1-211, 15-1-406, 15-8-601, 15-30-2602, 15-31-503, 15-35-112, 15-36-313, 15-36-314, 15-37-110, 15-37-114, 15-37-210, 15-38-110, 15-39-104, MCA

REASONABLE NECESSITY: ARM 42.2.510 contains the department's "30-day" rule for a taxpayer to appeal an audit determination or a final determination.

The department proposes to amend ARM 42.2.510 to extend this timeframe from 30 days to 45 days because taxpayers miss the 30-day deadline - often by a relatively short period - which results in additional appeals rather than an evaluation of the underlying issues. This rulemaking does add work for department staff but provides better service to the taxpayers by giving them more time to respond to our audit letters.

The more substantive change relates to what happens when the deadline lapses. Currently, if a taxpayer misses the deadline and lacks reasonable cause for doing so, the appeal is automatically over (subject to disputes over reasonable cause, etc.). This is a high standard. Conversely, (9) states that if the agency does not respond to a request for informal review (within 30 days), a taxpayer may advance the matter to the department's Office of Dispute Resolution (ODR). This is not an equivalent standard. The department proposes amending (5) to state that if the department does not issue its final determination within the 45-day window - and an extension has not been previously agreed to between the parties - the taxpayer's appeal for that year is deemed granted. Doing so levels the field for taxpayers and the agency, and also provides the department with an additional internal control measure for case management. As a result of this change, the department proposes to remove (9) because there is no other deadline contained within this rule to which it would pertain.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., August 22, 2022.

5. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State July 12, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and the amendment of ARM 42.39.104 pertaining to the creation of additional canopy license tiers for marijuana cultivators) NOTICE OF PUBLIC HEARING ON
) PROPOSED ADOPTION AND
) AMENDMENT
)
)

TO: All Concerned Persons

1. On August 16, 2022, at 11:00 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on July 29, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I MARIJUANA CULTIVATOR TIER 13 THROUGH 15 CANOPY LICENSE AND REGISTERED PREMISES REQUIREMENTS (1) Pursuant to 16-12-223(2), MCA, the department is authorized to create additional tiered canopy licenses for cultivators that meet the statutory criteria. The additional tiered canopy licenses are as follows:

(a) A tier 13 canopy license allows for a canopy of up to 60,000 square feet at up to 10 indoor cultivation facilities.

(b) A tier 14 canopy license allows for a canopy of up to 70,000 square feet at up to 11 indoor cultivation facilities.

(c) A tier 15 canopy license allows for a canopy of up to 80,000 square feet at up to 12 indoor cultivation facilities.

AUTH: 16-12-223, MCA

IMP: 16-12-223, MCA

REASONABLE NECESSITY: The department proposes to adopt New Rule I to establish the square footage and premises requirements for the tiers 13 through 15 canopy licenses. The additional tiers in New Rule I are necessary because the department has received requests from providers that are at the current tier 12 maximum to increase their cultivation space. The department proposes the stated

sizes because the tier increases of 10,000 square feet per increase are consistent with the square footage increases between tiers 10, 11, and 12. Creating three additional tiers will allow those providers at the current maximum of tier 12 to increase their tier level, at a minimum, for three years as tier increases can only happen once a year, at annual license renewal, for licensees above a tier 5.

4. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

42.39.104 LICENSE, APPLICATION, AND RENEWAL FEES (1) Initial licensure and renewal fees for the following license types and endorsements are:

(a) through (d) remain the same.

(e) Cultivator license:

(i) through (xi) remain the same.

(xii) \$32,000 for a cultivator with a tier 11 canopy license; ~~and~~

(xiii) \$37,000 for a cultivator with a tier 12 canopy license; ~~;~~

(xiv) \$42,000 for cultivator with a tier 13 canopy license;

(xv) \$47,000 for a cultivator with a tier 14 canopy license; and

(xvi) \$52,000 for a cultivator with a tier 15 canopy license.

(f) through (6) remain the same.

AUTH: 16-12-112, 16-12-202, 16-12-204, 16-12-222, 16-12-226, 16-12-508, 16-12-533, MCA

IMP: 16-12-112, 16-12-204, 16-12-222, 16-12-226, 16-12-508, 16-12-533, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.39.104 to establish additional canopy license fees which is necessary to support the creation of the new tiers 13 through 15 canopy licenses in New Rule I. The department proposes the stated canopy license fees because they increase by the same increment amount - \$5,000 - as tier 10 through tier 12 canopy licenses, and consistent license fee structures are beneficial to the department's administration of the Marijuana Regulation and Taxation Act.

FISCAL IMPACT:

Based on New Rule I and the amendments to ARM 42.39.104, and in accordance with 2-4-302(1)(c), MCA, the department's proposed annual fee will have a fiscal impact, but the initial impact applies only to tier 12 cultivators who apply to increase to a tier 13 canopy license. As of the date of this notice, there are three providers at a tier 12 that are eligible to increase their tier level at their next annual renewal. If these licensees did upgrade their canopy licenses, the fiscal impact next renewal cycle to these licensees would be \$15,000. Future fiscal impact is somewhat indeterminable because, currently, there are zero tier 11 canopy licensees and seven tier 10 canopy licensees.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., August 23, 2022.

6. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules may significantly and directly impact small businesses, and the potential impact is provided in the department's fiscal impact statement.

/s/ Todd Olson

Todd Olson
Rule Reviewer

/s/ Brendan Beatty

Brendan Beatty
Director of Revenue

Certified to the Secretary of State July 12, 2022.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I pertaining to the authorization) PROPOSED ADOPTION
of marijuana dispensary customer)
loyalty programs)

TO: All Concerned Persons

1. On August 16, 2022, at 12:00 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption of the above-stated rule. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on July 29, 2022. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I MARIJUANA DISPENSARY CUSTOMER LOYALTY PROGRAMS (1) A marijuana dispensary may enroll customers in its loyalty program which incentivizes customer purchases from the dispensary.

(2) A customer may not be automatically enrolled in a loyalty program using an identification scan or by any other means. To comply with 16-12-104(12), MCA, all metadata obtained from an identification scan may be used for purposes of determining a person's age only and must be permanently deleted within 180 days of purchase.

(3) A customer loyalty program may not offer or reward a customer with free marijuana or marijuana products in violation of 16-12-207(7), MCA.

(4) If loyalty points or similar customer rewards are offered consistently and are available to all customers, then the loyalty points are considered non-taxable. Loyalty points may be accumulated and applied as a discount to a dispensary's established retail price. A customer shall be charged the applicable tax rate based on the discounted retail price after redemption of any loyalty points.

(5) A dispensary that has already automatically enrolled customers in a loyalty program, as prohibited in (2), must purge all metadata for affected customers within 90 days of adoption of this rule.

AUTH: 16-12-112, MCA
IMP: 16-12-207, MCA

REASONABLE NECESSITY: Section 16-12-207, MCA, prohibits a marijuana licensee from giving away marijuana or marijuana products, but despite this restriction and despite the department's repeated reminders to dispensaries to comply, the department consistently learns of dispensaries that offer free marijuana or marijuana products to customers in exchange for customer "loyalty" to the dispensary.

The department proposes a solution - through the adoption of New Rule I - to acknowledge that loyalty programs are permissible (see proposed (1)) but reinforces in proposed (2) that a dispensary is prohibited from automatically enrolling customers and maintaining data obtained with an identification scan under 16-12-104, MCA.

Section (3) is a necessary reiteration of statutory requirements in 16-12-207, MCA, prohibiting the giving away of marijuana or marijuana products.

Section (4) proposes to notify dispensaries how to tax products subject to a loyalty discount or earned with loyalty points.

Section (5) proposes to provide a grace period for voluntary licensee compliance of the requirements set forth in the rule.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m. August 23, 2022.

5. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

7. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Brendan Beatty
Brendan Beatty
Director of Revenue

Certified to the Secretary of State July 12, 2022.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.3.116, 44.3.2204, and) PROPOSED AMENDMENT
44.3.2511 pertaining to clarification of)
timing of certain activities of Election)
Administrators)

TO: All Concerned Persons

1. On August 12, 2022, at 10:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., August 5, 2022, to advise us of the nature of the accommodation that you need. Please contact Sue Ames, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-2807; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or e-mail sames@mt.gov.

3. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

44.3.116 ELECTRONIC TRANSMISSION OF VOTING MATERIALS

(1) through (1)(d) remain the same.

(e) No sooner than the time permitted for preparation of ballots pursuant to 13-13-241(7), MCA, the election administrator shall have the returned ballots transcribed using the procedure prescribed below. If the received ballot is acceptable pursuant to the requirements of 13-13-246, MCA, the election administrator shall:

(e)(i) through (k) remain the same.

AUTH: 13-13-246, MCA

IMP: 13-13-246, MCA

44.3.2204 PROCESSES AND PROCEDURES FOR EARLY PREPARATION OF ABSENTEE BALLOTS (1) The processes and procedures for early preparation of absentee ballots are conducted after completion of or in conjunction with the processes and procedures in 13-13-241(1) through ~~(7)~~ (8), MCA.

(2) The following processes and procedures, when implemented by the election administrator, are intended to ensure the security of ballots and secrecy of votes during the early preparation of ballots not sooner than ~~one business day~~

~~before election day~~ the earliest time permitted by 13-13-241(7), MCA. The election administrator shall ensure that the early absentee ballot preparation area:

(a) through (5) remain the same.

(6) Immediately after early preparation of absentee ballots and until ballot counting begins ~~on election day~~, the prepared absentee ballots must be stored in secure containers with numbered security seals and:

(a) through (7) remain the same.

(8) Nothing in this rule shall be construed to permit an election official to count absentee ballots or other ballots ~~before election day~~ the time permitted by statute.

AUTH: 13-13-241, MCA

IMP: 13-13-241, MCA

44.3.2511 ELECTRONIC TRANSMISSION OF VOTING MATERIALS

(1) through (1)(e) remain the same.

(f) ~~On or before election day~~ No sooner than the time permitted for preparation of ballots pursuant to 13-13-241(7), MCA, the election administrator shall have the returned ballots transcribed, as applicable, using the procedure prescribed below.

(g) through (2) remain the same.

AUTH: 13-21-104, MCA

IMP: 13-13-241, 13-21-104, MCA

REASONABLE NECESSITY: The proposed changes better clarify the timing of certain activities of election administrators by referencing statute in order to preclude varying interpretations of law and rule. The changes are in line with SB 162 (2019), which among other things revised the timelines for handling absentee and mail ballots.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., August 19, 2022.

5. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

6. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may submit their request online at <https://sosmt.gov/arm/secretary-of-state-administrative-rules/> or submit a written request which includes the name and contact information of the person who wishes to receive notices. Written requests may be mailed or delivered to the Secretary of

State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to sosarm@mt.gov.

7. With regard to the requirements of 2-4-302(2)(d), MCA, the primary bill sponsor, Senator Webb, was contacted by phone and email (confirmed receipt) on June 30, 2022.

8. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ AUSTIN JAMES
Austin James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 12th day of July 2022.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.2.204, 44.2.302, 44.5.114,) PROPOSED AMENDMENT
44.5.115, 44.5.119, 44.5.120, and)
44.5.121 pertaining to the update of)
provisions related to Business)
Services filings and other)
administrative updates)

TO: All Concerned Persons

1. On August 12, 2022, at 10:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., August 5, 2022, to advise us of the nature of the accommodation that you need. Please contact Sue Ames, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-2807; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or e-mail sames@mt.gov.

3. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

44.2.204 ACCESS TO PUBLIC INFORMATION AND FEES FOR COPIES

(1) remains the same.

(2) Requests to examine public information in the Secretary of State's Office will be granted by appointment. There is no charge for examination of public information in the office, but fees for research and preparing public information for examination or copying will be charged in accordance with (56).

(3) through (7) remain the same.

AUTH: 2-6-1006, 2-15-405, MCA

IMP: Article II, section 9, Montana Constitution, 2-6-1003, 2-6-1006, MCA

REASONABLE NECESSITY: The proposed change corrects an internal reference which appears to be a clerical error made in the previous rulemaking (MAR Notice No. 44-2-226).

44.2.302 SECRETARY OF STATE'S STATEWIDE ELECTRONIC FILING SYSTEM (1) Pursuant to 2-15-401 and 2-15-404, MCA, the Secretary of State has developed and ~~partially~~ implemented a statewide electronic filing system (system) to

allow the online filing of many business documents required to be filed with the Secretary of State.

(2) and (3) remain the same.

(4) ~~System~~ Users are required to set up an account to create or edit records maintained in the system through ePass ~~(the state of Montana's online access portal)~~, which identifies them for the purpose of authentication, ~~unless the Secretary of State is granted an exception from complying with ePass policies or standards.~~

(5) through (7) remain the same.

(8) Users submitting a business filing that is ~~rejected~~ returned by the Secretary of State have ~~400~~ 90 days to resubmit the document or it will be removed from the electronic repository that holds documents during the working stage of the filing process.

AUTH: 2-15-401, 2-15-404, MCA

IMP: 2-15-401, 2-15-404, MCA

REASONABLE NECESSITY: The proposed changes address several administrative updates.

- The system is fully implemented.
- The state's ePass login system has been discontinued.
- Business filings submitted electronically that are deficient are returned for correction, not rejected.
- The change from 100 days in the electronic repository to 90 days is proposed to better align with system functionality and reflects processing efficiencies of the system.

44.5.114 CORPORATIONS - PROFIT AND NONPROFIT FEES

(1) Domestic filings:

(a) through (e) remain the same.

(f) articles of merger or conversion 20.00

(g) through (2) remain the same.

(3) Both domestic and foreign filings:

(a) through (d) remain the same.

(e) annual report filed prior to or on April 15th 20.00

(f) through (j) remain the same.

(4) ~~Electronically filed~~ Documents returned because of deficiencies in the filing will not be assessed a ~~reprocessing~~ resubmission fee.

AUTH: 2-15-405, 35-2-1107, 35-7-103, 35-14-122, 35-14-130, MCA

IMP: 2-15-405, 35-2-119, 35-2-1003, 35-6-201, 35-14-120, 35-14-122, 35-14-130, MCA

REASONABLE NECESSITY: The changes in (1)(f), (3)(e), and (4) are proposed to provide clarity regarding current processes and terminology.

44.5.115 LIMITED LIABILITY COMPANY FEES

(1) Domestic filings:	
(a) articles of organization	\$ 35.00
~~plus \$50.00 for each series member named in the series LLC~~	
(b) remains the same.	15.00
(c) articles of amendment	15.00
~~plus \$50.00 for each series member named in the series LLC~~	
(d) remains the same.	
(e) articles of merger <u>or conversion</u>	20.00
(f) through (h) remain the same.	
(2) Foreign filings:	
(a) certificate of authority	70.00
~~plus \$50.00 for each series member named in the series LLC~~	
(b) amended certificate of authority	15.00
~~plus \$50.00 for each series member named in the series LLC~~	
(c) through (e) remain the same.	
(3) Both domestic and foreign filings:	
(a) through (c) remain the same.	
(d) annual report filed prior to <u>or on</u> April 15th	20.00
(e) through (h) remain the same.	
(i) <u>series member added to any series LLC</u>	<u>\$50/new member</u>
(4) ~~Electronically filed~~ Documents returned because of deficiencies in the filing will not be assessed a ~~reprocessing~~ <u>resubmission</u> fee.	

AUTH: 2-15-405, MCA

IMP: 2-15-405, 35-8-208, 35-8-211, 35-8-212, MCA

REASONABLE NECESSITY: The proposed changes simplify the rule by eliminating unnecessary repetition of fees that apply to both domestic and foreign filings. In addition, the changes in (1)(e), (3)(d), and (4) are proposed to provide clarity regarding current processes and terminology.

44.5.119 ASSUMED BUSINESS NAME FEES (1) through (7) remain the same.

~~(8) If a paper filed document is rejected because of deficiencies in the filing, a reprocessing fee of 50 percent of the initial filing fee will be assessed each time the document is resubmitted.~~

~~(9)~~ (8) ~~Electronically filed~~ Documents ~~rejected~~ returned because of deficiencies in the filing will not be assessed a ~~reprocessing~~ resubmission fee.

~~(10) Documents filed with inadequate funds will be rejected and when refiled must be accompanied by a dollar amount that satisfies the initial filing fee and includes the 50 percent reprocessing fee.~~

AUTH: 2-15-405, MCA

IMP: 2-15-405, 30-13-217, MCA

REASONABLE NECESSITY: The proposed changes address several administrative updates.

- The rule language related to the rejection of paper filings is no longer relevant or necessary as all filings are submitted electronically.
- Filings submitted that are deficient are returned for correction, not rejected and are not charged a resubmission fee.
- The system does not allow filings to be submitted without adequate funds, therefore the rule language addressing this is unnecessary.

44.5.120 TRADEMARK FEES (1) through (5) remain the same

~~(6) If a paper filed document is rejected because of deficiencies in the filing, a reprocessing fee of 50 percent of the initial filing fee will be assessed each time the document is resubmitted.~~

(7) ~~(6)~~ Electronically filed Documents rejected returned because of deficiencies in the filing will not be assessed a reprocessing resubmission fee.

~~(8) Documents filed with inadequate funds will be rejected and when refiled must be accompanied by a dollar amount that satisfies the initial filing fee and includes the 50 percent reprocessing fee.~~

AUTH: 2-15-405, MCA

IMP: 2-15-405, 30-13-311, 30-13-313, 30-315, 30-13-320, MCA

REASONABLE NECESSITY: The proposed changes address several administrative updates.

- The rule language related to the rejection of paper filings is no longer relevant or necessary as all filings are submitted electronically.
- Filings submitted that are deficient are returned for correction, not rejected and are not charged a resubmission fee.
- The system does not allow filings to be submitted without adequate funds therefore the rule language addressing this is unnecessary.

44.5.121 MISCELLANEOUS FEES

(1) Certificate of fact \$ 15.00

~~(a) on-line certificate of fact 15.00~~

(2) Certified document(s) request per business entity ~~Copy per name for any business entity related document with or without certification~~ 10.00

~~(3) Documents or copies returned by fax 5.00~~

~~(a) (3) 24-hour priority processing handling per document or request 20.00~~

~~(b) (4) one-hour expedited processing filing for all documents 100.00~~

(c) through (f) remain the same but are renumbered (5) through (8).

(4) and (5) remain the same but are renumbered (9) and (10).

~~(6) (11) Bulk data for corporation records vary according to data type and number of documents. Please see the Secretary of State's web site. 2 cents per record~~

(7) through (11) remain the same but are renumbered (12) through (16).

~~(12) If a paper filed document is rejected because of deficiencies in the filing, a reprocessing fee of 50 percent of the initial filing fee will be assessed each time the document is resubmitted.~~

(13) (17) Electronically filed Documents ~~rejected~~ returned because of deficiencies in the filing will not be assessed a ~~reprocessing~~ resubmission fee.

~~(14) Documents filed with inadequate funds will be rejected and when refiled must be accompanied by a dollar amount that satisfies the initial filing fee and includes the 50 percent reprocessing fee.~~

AUTH: 2-15-403, 2-15-405, 20-7-604, 30-9A-526, 35-1-1307, 35-2-1107, 35-7-103, 82-1-104, MCA

IMP: 2-15-403, 2-15-405, 20-7-604, 30-9A-525, 30-13-320, 35-1-1206, 35-2-119, 35-2-1003, 35-2-1107, 35-7-103, 80-8-210, 82-1-104, MCA

REASONABLE NECESSITY: The proposed changes address several administrative updates.

- There is only one option for certificates of fact; therefore (1)(a) is duplicative and unnecessary.
- The proposed changes clarify all document requests are certified and there is a flat fee for each request per business entity, not a fee for each document requested.
- The proposed changes to the 24-hour priority processing and the one-hour expedited processing fees eliminate the requirement for businesses to pay the fee upon each resubmission, only upon the initial submission.
- The rule language related to the rejection of paper filings is no longer relevant or necessary as all filings are submitted electronically.
- Filings submitted that are deficient are returned for correction, not rejected and are not charged a resubmission fee.
- The system does not allow filings to be submitted without adequate funds; therefore, the rule language addressing this is unnecessary.

4. With regard to the requirements of 2-4-302(1)(c), MCA, it has been determined that two of the proposed changes will have a fiscal impact. It is estimated that approximately 5,000 business will be impacted each year by the fee changes which will result in an estimated \$124,000 annual savings for those businesses. The estimated impact for each fee is below.

- ARM 44.5.121(3)(a) – Miscellaneous Fees
 - An estimated 31,000 businesses request 24-hour priority processing each year. Of those, an estimated 4,700 had to resubmit their filing due to corrections and chose to pay for priority processing on the resubmission. With this change, businesses choosing priority processing will only pay the fee upon the original submission. An estimated 4,700 businesses will save \$94,000 annually with this change.
- ARM 44.5.121(3)(b) – Miscellaneous Fees
 - An estimated 2,200 businesses request one-hour expedited processing each year. Of those, an estimated 300 had to resubmit their filing due to corrections and chose to pay for

expedited processing on the resubmission. With this change, businesses choosing expedited processing will only pay the fee upon the original submission. An estimated 300 businesses will save \$30,000 annually with this change.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., August 19, 2022.

6. Austin James, Secretary of State's Office, has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may submit their request online at <https://sosmt.gov/arm/secretary-of-state-administrative-rules/> or submit a written request which includes the name and contact information of the person who wishes to receive notices. Written requests may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to sosarm@mt.gov.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the amendment of the above-referenced rules will directly impact small businesses. Based on the Montana Department of Labor and Industry's Quarterly Census of Employment and Wages, 99.9% of all Montana businesses are small businesses. Therefore, it is estimated that approximately 4,995 businesses will be positively impacted by the proposed fee changes.

/s/ AUSTIN JAMES

Austin James
Rule Reviewer

/s/ CHRISTI JACOBSEN

Christi Jacobsen
Secretary of State

Dated this 12th day of July 2022.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF PUBLIC HEARING ON
44.14.101 and 44.14.308 through	)	PROPOSED REPEAL AND
44.14.312 pertaining to records and	)	AMENDMENT
information management fees and	)	
the amendment of ARM 44.14.106,	)	
44.14.201, 44.14.202, and 44.14.203	)	
pertaining to delegation authority for	)	
records disposal of public records	)	
and records storage systems and	)	
requirements	)	

TO: All Concerned Persons

1. On August 12, 2022, at 11:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Office conference room, Room 260, State Capitol, Helena, Montana, to consider the proposed repeal and amendment of the above-stated rules.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m., August 5, 2022, to advise us of the nature of the accommodation that you need. Please contact Sue Ames, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 444-2807; fax (406) 444-3976; TDD/Montana Relay Service (406) 444-9068; or e-mail sames@mt.gov.

3. The rules proposed to be repealed are as follows:

44.14.101 RECORDS RETAINED ON DIGITAL MEDIA

AUTH: 2-6-111, 2-6-203, MCA

IMP: 2-6-111, 2-6-203, 2-6-206, 2-6-211, 2-6-213, 2-6-214, 2-6-302, 2-6-304, 2-15-1013, MCA

REASON: The State Records Committee, pursuant to statutorily imposed duties, upon vote, advised the Office of the Secretary of State of a recommendation to repeal ARM 44.14.101. The Secretary of State accepts the committee's recommendation that ARM 44.14.101 has become outdated and no longer relevant under current state record management technology standards. Accordingly, the Secretary proposes to adopt the recommended repeal of ARM 44.14.101.

44.14.308 MISCELLANEOUS FEES

AUTH: 2-15-405, MCA
IMP: 2-6-1114, MCA

44.14.309 MISCELLANEOUS SUPPLIES

AUTH: 2-15-405, MCA
IMP: 2-6-1101, 2-6-1114, MCA

44.14.310 FEES FOR RECORDS CENTER SERVICES

AUTH: 2-15-405, MCA
IMP: 2-6-1114, MCA

44.14.311 FEES FOR RECORDS CENTER BOXES

AUTH: 2-15-405, MCA
IMP: 2-6-1114, MCA

44.14.312 FEES FOR IMAGING SERVICES

AUTH: 2-15-405, MCA
IMP: 2-6-1101, MCA

REASON: As of March 2019, the Office of the Secretary of State no longer charges fees to any agencies for records management services or supplies. As such, the Secretary proposes to repeal these rules, as they no longer reflect records management services and supplies practices.

4. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

44.14.106 DELEGATION AUTHORITY FOR DISPOSAL OF PUBLIC RECORDS (1) Per ~~2-6-203~~ 2-6-1101, MCA, it is the duty of the Secretary of State to ensure the proper management and safeguarding of public records as defined in ~~2-6-202~~ 2-6-1002(13), MCA.

(2) The state records committee, as established by ~~2-6-208~~ 2-6-1107, MCA, whose presiding officer is the Secretary of State, is authorized to approve, modify, or disapprove of agency requests to dispose of public records.

(3) Per ~~2-6-213~~ 2-6-1103, MCA, each executive branch agency of state government is mandated to administer its records management function.

(4) and (5) remain the same.

(6) A delegation agreement will be in effect for ~~one~~ five years with renewal dependent on ~~an annual~~ review by the Secretary of State and the state records committee to determine if modifications are necessary.

AUTH: 2-6-203, MCA
IMP: ~~2-6-203, 2-6-204, 2-6-205, 2-6-212, 2-6-213,~~ 2-6-1101, 2-6-1103,

MCA

REASON: The State Records Committee, pursuant to statutorily imposed duties, upon vote, advised the Office of the Secretary of State of a recommendation to extend the period for renewal of a delegation agreement from one year to five years. The Secretary accepts the committee's recommendation with the proposal above. In addition, the proposed changes update references to repealed statutes.

44.14.201 USE OF ELECTRONIC RECORDS STORAGE SYSTEMS FOR LOCAL GOVERNMENT DOCUMENTS (1) remains the same.

AUTH: 2-6-404, MCA
IMP: ~~2-6-403~~ 2-6-1205, MCA

44.14.202 STORAGE REQUIREMENT FOR ELECTRONICALLY STORED DOCUMENTS WITH GREATER THAN TEN YEAR RECORD RETENTION (LONG-TERM RECORDS) (1) and (2) remain the same.

AUTH: 2-6-404, MCA
IMP: ~~2-6-403, 2-6-405~~ 2-6-1205, MCA

44.14.203 STORAGE REQUIREMENT FOR ELECTRONICALLY STORED DOCUMENTS WITH LESS THAN TEN YEAR RECORD RETENTION SCHEDULE (1) remains the same.

AUTH: 2-6-404, MCA
IMP: ~~2-6-403~~ 2-6-1205, MCA

REASON: The proposed changes update references to repealed statutes.

5. With regard to the requirements of 2-4-302(1)(c), MCA, it has been determined that these changes will not have a fiscal impact and no persons will be affected. Agencies currently receive records management services through a state-approved vendor. The Secretary of State's Office has not received payment from fees charged for records management services and supplies in over three years.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Angela Nunn, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing angela.nunn@mt.gov, and must be received no later than 5:00 p.m., August 19, 2022.

7. Austin James, Chief Legal Counsel, Secretary of State's Office, has been designated to preside over and conduct the hearing.

8. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish

to have their name added to the list may submit their request online at <https://sosmt.gov/arm/secretary-of-state-administrative-rules/> or submit a written request which includes the name and contact information of the person who wishes to receive notices. Written requests may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1301 E. 6th Avenue, P.O. Box 202801, Helena, MT 59620-2801, or emailed to sosarm@mt.gov.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the Secretary of State has determined that the repeal and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ AUSTIN JAMES

Austin James
Rule Reviewer

/s/ CHRISTI JACOBSEN

Christi Jacobsen
Secretary of State

Dated this 12th day of July, 2022.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to public meetings) NOTICE OF ADOPTION
)

TO: All Concerned Persons

1. On May 13, 2022, the Department of Administration published MAR Notice No. 2-2-624 pertaining to the proposed adoption of the above-stated rule at page 640 of the 2022 Montana Administrative Register, Issue Number 9.

2. The department has adopted the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (2.2.102) PUBLIC MEETINGS (1) Except as otherwise provided in 2-3-104, MCA, when the department holds a meeting as defined in 2-3-202, MCA, the department shall:

(a) use best efforts to post meeting or hearing notices, including advisory council and board meetings, a week or more ahead of time, ~~but never less than 72 hours;~~ Meetings shall be posted a minimum of 72 hours in advance;

(b) through (3) remain as proposed.

AUTH: 2-3-103, 2-4-201, MCA

IMP: 2-3-103, MCA

3. The department has thoroughly considered the comments received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: A comment was received stating the proposed rule could be amended to better clarify that the deadline is 72 hours, but that the department would use best efforts to post notices a week or more ahead of time.

RESPONSE 1: The department agrees and has amended the rule accordingly.

/s/ Don Harris

Don Harris
Rule Reviewer

/s/ Misty Ann Giles

Misty Ann Giles
Director
Department of Administration

Certified to the Secretary of State July 12, 2022.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 10.64.301 pertaining to school)
bus requirements)

TO: All Concerned Persons

1. On January 28, 2022, the Board of Public Education published MAR Notice No.10-64-283 pertaining to the proposed amendment of the above-stated rule at page 140 of the 2022 Montana Administrative Register, Issue Number 2.
2. The board has amended the above-stated rule as proposed.
3. No comments or testimony were received.

/s/ McCall Flynn
McCall Flynn
Rule Reviewer

/s/ Tammy Lacey
Tammy Lacey
Chair
Board of Public Education

Certified to the Secretary of State July 12, 2022.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF DECISION ON
Rules I and II, the amendment of	)	PROPOSED ADOPTION,
ARM 18.7.203, 18.7.204, and	)	AMENDMENT, AND REPEAL
18.7.206, and the repeal of 18.7.205	)	
and 18.7.221 pertaining to Utility	)	
Right-of-Way Occupancy	)	

TO: All Concerned Persons

1. On May 27, 2022, the Department of Transportation published MAR Notice No. 18-187 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 722 of the 2022 Montana Administrative Register, Issue Number 10.

2. A public hearing on the notice of proposed adoption, amendment, and repeal of the above-stated rules was held on June 22, 2022.

3. On July 8, 2022, the department published a second notice of public hearing and extension of comment period on the proposed adoption, amendment, and repeal of the above-state rules at page 1176 of the 2022 Montana Administrative Register, Issue Number 13.

4. The department has decided to cancel the second public hearing on the proposed adoption, amendment, and repeal of the above-stated rules that was scheduled for July 15, 2022.

5. The department has decided not to adopt New Rules I and II, amend ARM 18.7.203, 18.7.204, and 18.7.206, and repeal ARM 18.7.205 and 18.7.221, due to objections from the Transportation Interim Committee. The department is proposing to adopt new rules, amend ARM 18.7.203, 18.7.204, and 18.7.206, and repeal ARM 18.7.205 and 18.7.221 in a new rulemaking filed separately.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Malcolm "Mack" Long
Malcolm "Mack" Long
Director
Department of Transportation

Certified to the Secretary of State July 12, 2022.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF REPEAL
24.22.501, 24.22.504, 24.22.507,)
24.22.510, 24.22.513, 24.22.516,)
24.22.519, and 24.22.522 pertaining)
to the Montana Employment)
Advancement Right Now (EARN))
Program Act)

TO: All Concerned Persons

1. On June 10, 2022, the Department of Labor and Industry (department) published MAR Notice No. 24-22-394 pertaining to the public hearing on the proposed repeal of the above-stated rules at page 863 of the 2022 Montana Administrative Register, Issue Number 11.

2. The department held a public hearing in Helena on July 6, 2022, over the Zoom videoconference and telephonic platform at which no members of the public commented. Written comments were not received during the public comment period.

3. The department has repealed ARM 24.22.501, 24.22.504, 24.22.507, 24.22.510, 24.22.513, 24.22.516, 24.22.519, and 24.22.522 as proposed.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Alternate Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 12, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.34.3005 pertaining to)
developmental disabilities waiver)
programs reimbursement)

TO: All Concerned Persons

1. On May 13, 2022, the Department of Public Health and Human Services published MAR Notice No. 37-993 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 672 of the 2022 Montana Administrative Register, Issue Number 9.

2. The department has amended the following rule as proposed: ARM 37.34.3005.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: One commenter supports the department's decision to increase rates for home-delivered meals and encourages the department to monitor the need for additional rate increases.

RESPONSE #1: The department is committed to ensuring waiver members have an array of service providers and services to meet their individual needs. Rate adequacy for meal services, along with most other services for the Developmental Disabilities 0208 waiver is currently undergoing review by the department's contractor, Guidehouse. Following the review, Guidehouse will provide rate recommendations for 0208 waiver services.

4. The department intends to apply the rule amendment retroactively to July 1, 2022. A retroactive application of the proposed rule amendment does not result in a negative impact to any affected party.

/s/ Aleea Sharp
Aleea Sharp
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State July 12, 2022.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

Water Policy Interim Committee (where the primary concern is the quality or quantity of water):

- Department of Environmental Quality;
- Department of Fish, Wildlife and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: **Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|------------------|--|
| Known
Subject | 1. Consult ARM Topical Index.
Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers. |

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2022. This table includes notices in which those rules adopted during the period January 28, 2022, through July 8, 2022, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2022, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2022 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

ADMINISTRATION, Department of, Title 2

2-2-624	Public Meetings, p. 640
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EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in June 2022 appear. Potential vacancies from August 1, 2022 through August 31, 2022, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of July 1, 2022.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

EXECUTIVE BRANCH APPOINTEES FOR JUNE 2022

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Housing			
Mr. John Wright	Governor	Charles Robison	6/13/2022
Billings			1/5/2025
Qualifications (if required): Lawyer			
Board of Personnel Appeals			
Mr. Curtis Schomer	Governor	Mario Martinez	6/20/2022
Billings			1/1/2023
Qualifications (if required): Labor Management experience			
South Central Elder Justice Council			
Ms. Nancy Andersen	Governor	New	6/27/2022
Helena			9/30/2023
Qualifications (if required): Fraud, Finance, Community Outreach Experience			
Ms. Brenna Collins-Anderson	Governor	New	6/27/2022
Butte			9/30/2023
Qualifications (if required): Healthcare and Social Work Experience			
Ms. Maureen Exley	Governor	New	6/27/2022
Bozeman			9/30/2023
Qualifications (if required): Law Experience			

EXECUTIVE BRANCH APPOINTEES FOR JUNE 2022

<u>Appointee</u>	<u>Appointed By</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
South Central Elder Justice Council Cont.			
Mr. Michael Hagenlock Belgrade	Governor	New	6/27/2022 9/30/2023
Qualifications (if required): Social Work and Addiction Counseling Experience			
Mr. Richard Heitstuman Helena	Governor	New	6/27/2022 9/30/2023
Qualifications (if required): Senior Advocacy Experience			
Ms. Patricia Jirsa Helena	Governor	New	6/27/2022 9/30/2023
Qualifications (if required): Tax and Finance Experience			
Ms. LaDawn Whiteside Helena	Governor	New	6/27/2022 9/30/2023
Qualifications (if required): Healthcare and Adult Services Experience			

EXECUTIVE BRANCH VACANCIES – JULY 1, 2022 THROUGH JULY 31, 2022

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Advisory Council on Aging		
Mrs. Marianne B. Roose, Eureka Qualifications (if required): Public Representative	Governor	7/1/2022
Mr. Alex E. Ward, Billings Qualifications (if required): Public Representative	Governor	7/1/2022
Ms. Roberta Bigback, Lame Deer Qualifications (if required): Public Representative	Governor	7/1/2022
Board of Funeral Service		
Mr. John Tarr, Helena Qualifications (if required): Representative of the public	Governor	7/1/2022
Mr. James Coryell Axelson, Butte Qualifications (if required): Representative of a Cemetery Company	Governor	7/1/2022
Mr. Jayson Daniel Watkins, Kalispell Qualifications (if required): Licensed Mortician	Governor	7/1/2022
Board of Nursing		
Ms. Darlene Schulz, Deer Lodge Qualifications (if required): Licensed Practical Nurse	Governor	7/1/2022

EXECUTIVE BRANCH VACANCIES – JULY 1, 2022 THROUGH JULY 31, 2022

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Nursing Cont.		
Mr. Tom Glover, Great Falls Qualifications (if required): Public member	Governor	7/1/2022
Ms. Deborah L. Johnson, Helena Qualifications (if required): Public member	Governor	7/1/2022
Ms. Leesha Ford, Great Falls Qualifications (if required): Registered Nurse	Governor	7/1/2022
Board of Pharmacy		
Ms. Marian Jensen, Butte Qualifications (if required): Public Member	Governor	7/1/2022
Board of Physical Therapy Examiners		
Ms. Jennifer Lynn Reisenauer, Deer Lodge Qualifications (if required): Licensed Physical Therapist	Governor	7/1/2022
Board of Professional Engineers and Professional Land Surveyors		
Mr. Ronald Drake, Helena Qualifications (if required): Professional Chemical Engineer	Governor	7/1/2022
Mr. Troy Soren Jensen, Sidney Qualifications (if required): Professional and practicing land surveyor for at least 12 years	Governor	7/1/2022

EXECUTIVE BRANCH VACANCIES – JULY 1, 2022 THROUGH JULY 31, 2022

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Public Accountants		
Ms. Kathleen VanDyke, Bozeman Qualifications (if required): Public Representative	Governor	7/1/2022
Mr. John W. Jacobsen, Billings Qualifications (if required): Certified Public Accountant	Governor	7/1/2022
Mr. Michael Huotte, Anaconda Qualifications (if required): Certified Public Accountant	Governor	7/1/2022
Board of Radiologic Technologists		
Mr. Mike Nielsen, Billings Qualifications (if required): Radiologic Assistant	Governor	7/1/2022
Board of Sanitarians		
Mrs. Stephanie Jean Ler, Savage Qualifications (if required): Registered sanitarian	Governor	7/1/2022
Board of Trustees for the Montana Historical Society		
BG (Ret.) Harold Joseph Stearns, Missoula Qualifications (if required): Historian	Governor	7/1/2022
Mr. Stephen W. Lozar, Polson Qualifications (if required): Public representative	Governor	7/1/2022

EXECUTIVE BRANCH VACANCIES – JULY 1, 2022 THROUGH JULY 31, 2022

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Board of Trustees for the Montana Historical Society Cont. Mr. Kent Kleinkopf, Missoula Qualifications (if required): Public Representative	Governor	7/1/2022
Board of Water Well Contractors Mr. Patrick Joseph Byrne, Great Falls Qualifications (if required): Licensed Montana water well contractor	Governor	7/1/2022
Commission on Community Service Ms. Amy Unsworth, Helena Qualifications (if required): Agency Representative	Governor	7/1/2022
Ms. Karin Billings, Helena Qualifications (if required): Public Representative	Governor	7/1/2022
Mr. James Larson, Billings Qualifications (if required): Organized Labor	Governor	7/1/2022
Ms. Heather Margolis, Bozeman Qualifications (if required): National Service Program	Governor	7/1/2022
Mr. Kevin Myhre, Lewistown Qualifications (if required): Business Representative	Governor	7/1/2022
Ms. Andrea L. Surratt, Bozeman Qualifications (if required): Local Government	Governor	7/1/2022

EXECUTIVE BRANCH VACANCIES – JULY 1, 2022 THROUGH JULY 31, 2022

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Commission on Community Service Cont.		
Ms. Rebecca Harbage, Helena Qualifications (if required): Agency Representative	Governor	7/1/2022
Commissioner Juanita Vero, Missoula Qualifications (if required): Local Government	Governor	7/1/2022
Ms. Hadley Jackson, Missoula Qualifications (if required): State agency, Higher Education	Governor	7/1/2022
Committee on Telecommunications Access Services for Persons With Disabilities		
Mr. John Pavao, Helena Qualifications (if required): Member from the Department of Administration	Governor	7/1/2022
Mr. Thomas Henry Thompson, Missoula Qualifications (if required): Person with a disability	Governor	7/1/2022
Ms. Chanda Hermanson-Dudley, Helena Qualifications (if required): Representative of the Dept. of Public Health and Human Services	Governor	7/1/2022
Mr. Ron Bibler, Big Sky Qualifications (if required): Disabilities Community	Governor	7/1/2022
Mr. Lee Hazelbaker, Belgrade Qualifications (if required): Non-disabled, engaged in a business	Governor	7/1/2022

EXECUTIVE BRANCH VACANCIES – JULY 1, 2022 THROUGH JULY 31, 2022

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Community Service Commission		
Mr. Donnie Wetzel, Jr., Helena	Governor	7/1/2022
Qualifications (if required): OPI Rep		
Future Fisheries Review Panel		
Ms. Nancy Winslow, Missoula	Governor	7/1/2022
Qualifications (if required): Expertise in mining reclamation techniques		
Mr. William Mytton, Absarokee	Governor	7/1/2022
Qualifications (if required): Expertise in commercial agriculture		
Mr. Robert Schroeder, Florence	Governor	7/1/2022
Qualifications (if required): Expertise in irrigated agriculture		
Governor's Advisory Council on Aging		
Ms. Gayle M. Carlson, Missoula	Governor	7/1/2022
Qualifications (if required): Public Representative		
Interagency Coordinating Council for State Prevention Programs		
Ms. Barbara A. Bessette, Great Falls	Governor	7/1/2022
Qualifications (if required): Experiences related to the private nonprofit provision of prevention programs		
Ms. Shantelle Gaynor, Missoula	Governor	7/1/2022
Qualifications (if required): Experiences related to the private or nonprofit provision of prevention programs		

EXECUTIVE BRANCH VACANCIES – JULY 1, 2022 THROUGH JULY 31, 2022

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Montana Agriculture Development Council		
Ms. Amy Nielsen Smith, Kalispell Qualifications (if required): Member who is or has been actively engaged in agriculture	Governor	7/1/2022
Mr. John Russel Wicks, Ledger Qualifications (if required): Member who is or has been actively engaged in agriculture	Governor	7/1/2022
Petroleum Tank Release Compensation Board		
Mr. Keith Schnider, Great Falls Qualifications (if required): Representative of the insurance industry	Governor	7/1/2022
Mr. Mark Allen Johnson, Bozeman Qualifications (if required): Representative of the petroleum industry	Governor	7/1/2022
Mr. Gregory Ben Taylor, Shelby Qualifications (if required): Independent Petroleum Marketers	Governor	7/1/2022
Resource Conservation Advisory Council		
Mr. Bob Schroeder, Florence Qualifications (if required): Western Montana	Governor	7/1/2022
Ms. Judi Knapp, Hysham Qualifications (if required): South Central Montana	Governor	7/1/2022
Ms. Gayla Wortman, Cascade Qualifications (if required): North Central Montana	Governor	7/1/2022

EXECUTIVE BRANCH VACANCIES – JULY 1, 2022 THROUGH JULY 31, 2022

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Resource Conservation Advisory Council Cont.		
Mr. Doug Bonsell, Ekalaka Qualifications (if required): Eastern Montana	Governor	7/1/2022
Mr. Bob Breipohl, Saco Qualifications (if required): Eastern Montana	Governor	7/1/2022
Mr. O. Ramsey Offerdal, Conrad Qualifications (if required): North Central Montana	Governor	7/1/2022
Ms. Kathleen Johnson, Fortine Qualifications (if required): None Stated	Governor	7/1/2022
State Banking Board		
Ms. Jennifer L. McGinnis, Polson Qualifications (if required): Member of the public	Governor	7/1/2022
Mr. William L. Davies, Billings Qualifications (if required): Active officer of a national bank doing business in Montana	Governor	7/1/2022
State Electrical Board		
Mr. Harry Freebourn, Butte Qualifications (if required): Member representing the public	Governor	7/1/2022
Mr. James P. Reardon, Helena Qualifications (if required): Member representing the public	Governor	7/1/2022

EXECUTIVE BRANCH VACANCIES – JULY 1, 2022 THROUGH JULY 31, 2022

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
State Workforce Innovation Board		
Director Sheila Hogan, Helena Qualifications (if required): DPHHS Director or designee	Governor	7/1/2022
Commissioner Michael McGinley, Dillon Qualifications (if required): Local Government Elected Official	Governor	7/1/2022
Mr. Grover Charles Wallace, Big Timber Qualifications (if required): Business Representative	Governor	7/1/2022
Mr. Alan Ekblad, Helena Qualifications (if required): Workforce Representative	Governor	7/1/2022
Director Tara Rice, Helena Qualifications (if required):	Governor	7/1/2022
Ms. Deborah Poteet, Missoula Qualifications (if required): Business representative	Governor	7/1/2022
Mrs. Jeaneen L. Campbell, Helena Qualifications (if required): Business Representative	Governor	7/1/2022
Commissioner Brenda Nordlund, Helena Qualifications (if required): Commissioner of Labor and Industry or designee	Governor	7/1/2022
Mr. Ross Lane, Bozeman Qualifications (if required): Business Representative	Governor	7/1/2022

EXECUTIVE BRANCH VACANCIES – JULY 1, 2022 THROUGH JULY 31, 2022

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
State Workforce Innovation Board Cont.		
Mr. William Collins, Great Falls Qualifications (if required): Workforce representative	Governor	7/1/2022
Mr. Steven Nicholls, Butte Qualifications (if required): Business Representative	Governor	7/1/2022
State-Tribal Economic Development Advisory Council		
Ms. Jestin Dupree, Poplar Qualifications (if required): Fort Peck Tribes Alternative Representative	Governor	7/1/2022
Councilwoman Kacie Walette, Poplar Qualifications (if required): Fort Peck Tribes Representative	Governor	7/1/2022
Teachers' Retirement Board		
Ms. Kari Peiffer, Kalispell Qualifications (if required): Active member retirement system, employed as a public school classroom teacher	Governor	7/1/2022
Tourism Advisory Council		
Ms. Lindzy Brunson, Kalispell Qualifications (if required): Glacier Country Region Representative	Governor	7/1/2022
Ms. Rhonda Price Fitzgerald, Whitefish Qualifications (if required): Glacier Country Region Representative	Governor	7/1/2022

EXECUTIVE BRANCH VACANCIES – JULY 1, 2022 THROUGH JULY 31, 2022

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Tourism Advisory Council Cont.		
Ms. Rachel Gregg, Missoula Qualifications (if required): Glacier Country Region Representative	Governor	7/1/2022
Ms. Katherine Marie Grice, Big Sky Qualifications (if required): Yellowstone Country Region Representative	Governor	7/1/2022
Mrs. Alicia Jayne Harvey, Bozeman Qualifications (if required): Yellowstone Country Representative	Governor	7/1/2022
Mr. Bill Mitchell McGladdery, Butte Qualifications (if required): Southwest Montana Region Representative	Governor	7/1/2022
Dr. Patricia A. McGlynn, Kalispell Qualifications (if required): Glacier Country Region Representative	Governor	7/1/2022
Ms. Sabre Addington Moore, Ekalaka Qualifications (if required): Southeast Montana Region Representative	Governor	7/1/2022
Underground Facility Protection Advisory Council		
Mr. John Bemis, Helena Qualifications (if required): Member representing a telecommunications provider	Governor	7/1/2022
Mr. Douglas Craig Hansen, Billings Qualifications (if required): Member representing a public utility	Governor	7/1/2022

EXECUTIVE BRANCH VACANCIES – JULY 1, 2022 THROUGH JULY 31, 2022

<u>Board/Current Position Holder</u>	<u>Appointed By</u>	<u>Term End</u>
Underground Facility Protection Advisory Council Cont.		
Mrs. Mandi Nay, Circle	Governor	7/1/2022
Qualifications (if required): Member representing a regional water system		
Mr. Nicholas James Pericich, Belgrade	Governor	7/1/2022
Qualifications (if required): Member representing a municipal sewer or water system		
Western Interstate Commission for Higher Education		
Representative Laurie Bishop, Livingston	Governor	7/1/2022
Qualifications (if required): State Legislator		

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SECRETARY OF STATE

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